



**CITY OF LODI
COUNCIL COMMUNICATION**

TM

AGENDA TITLE: Adopt Resolution Authorizing the City Manager to Approve the Northern California Power Agency Green Power Project (NGPP) Amended 3rd Phase Agreement (EUD)

MEETING DATE: January 16, 2008

PREPARED BY Electric Utility Director

RECOMMENDED ACTION: Adopt a resolution authorizing the City Manager to execute a Northern California Power Agency (NCPA) Green Power Project Amended 3rd Phase Agreement.

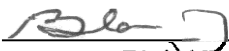
BACKGROUND INFORMATION: The purpose of the NCPA Green Power Project (NGPP) is to facilitate (i) the purchase of electricity from renewable resources and (ii) the investigation/acquisition of physical assets to generate electricity using renewable resources. The NGPP is intended to reduce reliance on fossil fuels by member utilities and aid in reaching renewable energy goals. At the same time, participating members like Lodi will benefit from the diversity which results from spreading energy requirements over multiple projects and from the economies of a pooled approach to resource acquisition.

The NGPP Agreement is an agreement between each participating Member and NCPA, and authorizes NCPA to procure eligible renewable power supply resources through resource development as well as one or more Requests for Proposals (RFP). The object of the RFP's is to seek out those proposals that will meet the renewable resource standards and provide the best value for the participants in the NGPP. The NGPP is expected to pursue resources developed and constructed by NCPA as well as purchases from independent renewable power producers through long-term or equity position contracts.

Eight NCPA member agencies will be participating in the NGPP. They include BART, Healdsburg, Lompoc, Palo Alto, Plumas, Santa Clara, Ukiah and Lodi. The total level of interest by the participant group is 64 megawatts (MW) with Lodi indicating an interest of up to 5 MW. With evolving state and federal regulations in the areas of Green House Gases and Renewable Portfolio Standards (RPS), membership by Lodi in NGPP will provide the opportunity to increase Lodi's portfolio of renewable power projects if and when desired. While Lodi complies with current laws on RPS levels (20% in 2017), there is proposed legislation that would increase RPS requirements significantly.

Any current NGPP signatory's failure to enact a resolution similar to approve the NGPP Agreement by January 31, 2008 will nullify this amended agreement and leave participants with the original version of the NGPP agreement as binding. In this case, Lodi would be unable to participate.

Execution of the Amended NGPP Agreement does not constitute a project for the purposes of the California Environmental Quality Act (CEQA). However, the Participants intend to receive output from projects that will constitute a project for the purposes of CEQA. The Amended NGPP Agreement

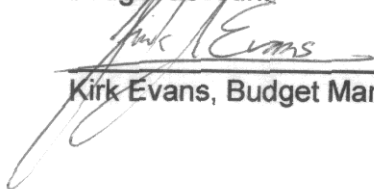
APPROVED: 
Blair King, City Manager

provides for NCPA, on behalf of itself and the project participants, to ensure that appropriate environmental reviews have been conducted prior to project implementation.

A copy of the Amended NGPP 3rd Phase Agreement is attached

FISCAL IMPACT: EUD will be responsible to pay about \$10,000 in NGPP setup and development costs. In addition, Lodi will pay its proportionate share of ongoing NGPP costs, which are expected to be less than \$10,000 for the remainder of FY08.

FUNDING: Funding for these costs will be through EUD's FY08 Power Supply operating budget account.


Kirk Evans, Budget Manager


George F. Morrow
Electric Utility Director

GFM/1st

Attachments

AMENDED
NCPA GREEN POWER PROJECT
THIRD PHASE AGREEMENT

TABLE OF CONTENTS

SECTION 1.	DEFINITIONS.	6
1.1	DEFINITIONS.	6
1.2	RULES OF INTERPRETATION.	17
SECTION 2.	EFFECTIVE DATE OF AGREEMENT.	18
SECTION 3.	PROCUREMENT PROCESS	18
3.1	REQUEST FOR PROPOSALS AND PPA(s).	18
3.2	PARTICIPANT APPROVAL OF PROCUREMENT PROCESS.	19
3.3	APPROVAL OF NGPP RESOURCES	19
3.4	ADDITIONAL PROVISIONS RELATED TO DEVELOPMENT OPPORTUNITIES.	21
3.5	DELIVERY OF ELECTRICITY / ALLOCATION OF ENVIRONMENTAL ATTRIBUTES.	22
3.6	CAPACITY ENTITLEMENT.	23
3.7	PAYMENTS TO COUNTERPARTIES.	23
3.8	REMOVAL OF NGPP RESOURCES FROM NGPP.	24
SECTION 4.	COOPERATION AND FURTHER ASSURANCES	24
SECTION 5.	BUDGET, OPERATING FUND, INVOICING	25
5.1	“NGPP COST ALLOCATION”	25
5.2	PAYMENT OF NGPP PROJECT COSTS.	25
5.3	APPLICABLE PERCENTAGES OF NGPP PROJECT COSTS AND BUDGETS.	25
5.4	BUDGETS AND BUDGET SETTLEMENTS.	26
5.5	SECURITY ACCOUNT.	27
5.6	INVOICING	30
5.7	AUDITING AND SETTLEMENT DATA	32
5.8	REVENUE COVENANT.	32
SECTION 6.	ADMINISTRATION OF AGREEMENT	33
6.1	GENERAL.	33
6.2	ACTION BY PARTICIPANTS	34
6.3	NGPP OVERSIGHT COMMITTEE.	35
6.4	PARTICIPANT REPRESENTATIVES	36
SECTION 7.	PARTICIPATION PERCENTAGE; ADMISSION AND WITHDRAWAL OF PARTICIPANTS	37
7.1	PARTICIPATION PERCENTAGES AND RESOURCE ALLOCATION PERCENTAGES.	37
7.2	ADMISSION OF NEW PARTICIPANTS.	37
7.3	WITHDRAWAL OF PARTICIPANTS	38
SECTION 8.	TERM AND TERMINATION	39

SECTION 9. DEFAULT AND REMEDIES	39
9.1 EVENTS OF DEFAULT.	39
9.2 CURE OF AN EVENT OF DEFAULT.....	40
9.3 PARTICIPATION RIGHTS OF DEFAULTING PARTY.	41
9.4 REMEDIES IN THE EVENT OF DEFAULT.....	41
9.5 EFFECT OF TERMINATION OR SUSPENSION	44
SECTION 10. MISCELLANEOUS.....	47
10.1 CONFIDENTIALITY.	47
10.2 INDEMNIFICATION AND HOLD HARMLESS.....	47
10.3 SEVERAL LIABILITIES.	48
10.4 NO CONSEQUENTIAL DAMAGES.....	48
10.5 AMENDMENTS.	49
10.6 SEVERABILITY.....	49
10.7 GOVERNING LAW.....	50
10.8 HEADINGS.....	50
10.9 NOTICES.....	50
10.10 WARRANTY OF AUTHORITY.....	51
10.11 COUNTERPARTS.....	51
10.12 ASSIGNMENT.	52
10.13 LIST OF EXHIBITS.....	52

Exhibits

Exhibit A	Participation Percentages and Resource Allocation Percentages
Exhibit B	Form of Resource Schedule
Exhibit C	Approved Resource Schedules
Exhibit D	Intentionally Omitted
Exhibit E	Intentionally Omitted
Exhibit F	Form of Request for Proposals
Exhibit G	Form of Power Purchase Agreement

AMENDED NCPA GREEN POWER PROJECT THIRD PHASE
AGREEMENT

This Amended Third Phase Agreement (hereinafter "Amended Agreement") is entered into on the Effective Date by and between the NORTHERN CALIFORNIA POWER AGENCY, a joint powers agency, created pursuant to the laws of the State of California (hereinafter "NCPA") and its members executing this Amended Agreement as reflected on Exhibit A hereto (hereinafter "Participants") for the purpose of procuring electrical power from NCPA's Green Power Project (hereinafter "NGPP"). NCPA and the Participants are referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

- A. NCPA and the Participants are interested in purchasing additional electricity generation from renewable resources for the benefit of Participants' customers.
- B. By purchasing electricity generated from renewable resources, NCPA and the Participants will help reduce the production of many environmental pollutants, assist in reducing reliance on fossil fuels, assist in stabilizing

the Participants' electric retail rates, and aid the State of California in reaching its renewable energy goals.

- C. This Amended Agreement will better enable NCPA to negotiate and enter into contracts to purchase electricity from renewable resources and investigate the acquisition of physical assets to generate electricity using renewable resources under market conditions that have changed from the time of the original Green Power Project.
- D. Through this Amended Agreement each Participant also seeks increased flexibility to choose and integrate any and all renewable resource acquisitions to their own unique needs arising from each Participants load profile, existing renewable energy portfolio, and transmission constraints.
- E. The Participants also desire to obligate and enable NCPA to conduct the foregoing activities, and deliver electricity from renewable resources to the Participants, and to obligate and enable the Participants to take delivery of and pay for such electricity and to investigate the acquisition of physical assets or the development of such to deliver electricity and to pay NCPA for the costs of undertaking the foregoing activities.
- F. This Amended Agreement supersedes that certain NGPP Third Phase Agreement entered into between NCPA and certain of the Participants with the effective date of December 14, 2006.

NOW THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree and intend to be legally bound as follows:

Section 1. Definitions.

1.1 Definitions.

Whenever used in this Amended Agreement (including the Recitals hereto), the following terms shall have the following respective meanings:

1.1.1 "Adjusting Participant" has the meaning set forth in Section 7.3.1.

1.1.2 "Amended Agreement" means this NCPA Green Power Project Third Phase Agreement, including all Exhibits attached hereto and incorporated by reference, as the same may be amended from time to time in accordance with the terms and conditions hereof.

1.1.3 "Allocating Participant" has the meaning set forth in Section 7.2.

1.1.4 "Associate Member" means an associate member of NCPA admitted to NCPA in accordance with Article IV, Section 7 of the Joint Powers Agreement.

1.1.5 “Average Capacity” in MW means the annual quantity of electricity in MWh forecast to be delivered from all NGPP Resources including the Proposed Resource calculated at the time a decision is made by NCPA with respect to whether to approve the Proposed Resource in accordance with Section 3.4 divided by the number of hours in the year.

1.1.6 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time.

1.1.7 “Claims” has the meaning set forth in Section 10.2.

1.1.8 “Commission” means the NCPA Commission.

1.1.9 “Constitutive Documents” means, with respect to NCPA, the Joint Powers Agreement and any resolutions or bylaws adopted thereunder, and with respect to each Participant, the California Government Code and other statutory provisions applicable to such Participant, any applicable agreements, charters, contracts or other documents concerning the formation, operation or decision making of such Participant, including, if applicable, its City Charter, and any codes, ordinances, bylaws, and resolutions adopted by such Participant’s governing body.

1.1.10 “Contract Price” means the actual contract price for procuring electricity from a Proposed Resource at the time a Power Purchase Agreement is executed.

1.1.11 “Defaulting Party” has the meaning set forth in Section 9.1.

1.1.12 “Effective Date” has the meaning set forth in Section 2.

1.1.13 “Electric System” means, with respect to each Participant, all properties and assets, real and personal, tangible and intangible, of the Participant now or hereafter existing, used for or pertaining to the generation, transmission, transformation, distribution and sale of electric capacity and energy, or the utilization of such, including all additions, extensions, expansions, improvements and betterments thereto and equipment thereof; provided, however, that to the extent the Participant is not the sole owner of an asset or property or to the extent that an asset or property is used in part for the above described purposes, only the Participant’s ownership interest in such asset or property or only the part of the asset or property used for electric purposes shall be considered to be part of its Electric System.

1.1.14 “Eligible Renewable Resource” means an electric power generator (i) producing power from one or more of the following fuels: Biomass, Biodiesel, Fuel cells using renewable fuels, Digester gas, Geothermal, Landfill gas, Municipal solid waste conversion, Ocean wave, Ocean thermal, Tidal current, Photovoltaic, Small hydroelectric (30 megawatts or less), Solar thermal, Wind, or other fuels and technologies as may be deleted from or added

to this list by the Participants, pursuant to Section 6.2, from time to time, and any additions or enhancements to a facility using such fuels and technology and (ii) which are (a) located within California, (b) are located outside of California and have their first point of interconnection with the Western Electricity Coordinating Council transmission system located within California or (c) are located outside of California but deliver electricity to a substation or node within California, or (d) as otherwise determined by the Participants pursuant to Section 6.2.

1.1.15 "Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to the generation from NGPP Resources. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. Environmental Attributes do not include (1) any energy, capacity, reliability or other power attributes from NGPP Resources, (2)

production tax credits associated with the construction or operation of the energy projects and other financial incentives in the form of credits, reductions, or allowances associated with a project that are applicable to a state or federal income taxation obligation, (3) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits, or (4) emission reduction credits encumbered or used by NGPP Resources for compliance with local, state, or federal operating and/or air quality permits.

1.1.16 "Event of Default" has the meaning set forth in Section 9.1.

1.1.17 "Forecast Price" means the estimated Contract Price for procuring electricity from a Proposed Resource, calculated at the time a decision is made with respect to whether to approve or Opt-Out of participating in the Proposed Resource.

1.1.18 "Joint Powers Agreement" means that certain Northern California Power Agency Joint Power Agreement by and among the Members as the same may be amended from time to time.

1.1.19 "Maximum Average Capacity" means the sum of the Participant elections expressed as average annual MWs labeled as "Total Annual aMW" in Exhibit A.

1.1.20 "Maximum Contract Price" means the applicable lawful ceiling price for capacity and/or energy at the time a purchase of an Eligible Renewable Resource is consummated; currently, the CAISO Bid Cap for its real-time imbalance energy market as approved by the Federal Energy Regulatory Commission

1.1.21 "Member" means any Associate Member or Voting Member of NCPA.

1.1.22 "MW" means megawatt.

1.1.23 "MWh" means megawatt-hour.

1.1.24 "NCPA" has the meaning set forth in the preamble hereto.

1.1.25 "NCPA Annual Budget" means the budget for the ensuing Budget Year adopted by the Commission, as it may be amended from time to time.

1.1.26 "NGPP" means the NCPA Green Power Project, which consists of the pool of NGPP Resources.

1.1.27 "NGPP Oversight Committee" means a committee of Participant Representatives established at the NCPA General Manager's discretion, for the purpose of offering input and recommendations to NCPA Staff or the General Manager with respect to matters pertaining to this Amended Agreement pursuant to the provisions of Section 6.3.

1.1.28 “NGPP Project Budget” means the budget created by NCPA to estimate the annual NGPP Project Costs, having the following budget subcategories:

- (i) “NGPP Program Budget” means the budget created by NCPA to estimate the annual, non-bypassable NGPP Program Costs
- (ii) “NGPP Development Budget” means the budget(s) created by NCPA to estimate the NGPP Development Costs to be incurred prior to the time of execution of a Third Phase Agreement to pursue the development of a Proposed Resource for those Participants who have not exercised their initial Opt-Out right.
- (iii) “NGPP PPA Budget” means the budget(s) created by NCPA to estimate the NGPP PPA Costs to be incurred to finalize the acquisition of a Proposed Resource through a Power Purchase Agreement for those Participants who have not exercised their Opt-Out right.

1.1.29 “NGPP Project Costs” means any and all costs, internal and external, direct and indirect, incurred by NCPA in connection with performing its obligations under this Amended Agreement, including NGPP Program Costs, NGPP PPA Costs, and NGPP Development Costs.

- (i) “NGPP Program Costs” means all costs incurred by NCPA prior to the time Participants are afforded an opportunity to Opt-Out of the procurement or development of an Eligible Renewable Resource, including but not limited to costs incurred to issue Requests for Proposals, and the investigation and evaluation thereof, and preparation of corresponding Preliminary Resource Summaries.

- (ii) “NGPP PPA Costs” means all costs incurred by NCPA to acquire and pay for an Eligible Renewable Resource through a Power Purchase Agreement, including but not limited to negotiating and implementing Power Purchase Agreements, provided that such costs arise after Participants have been afforded a chance to exercise their Opt-Out rights in accordance with Section 3.4.
- (iii) “NGPP Development Costs” means all costs, incurred by NCPA to develop an Eligible Renewable Resource, including but not limited to further investigation, preliminary arrangements for financing, and the provision of recommendations regarding the development, construction, installation, operation, ownership and maintenance of the Eligible Renewable Resources, provided that such costs arise after Participants have been afforded a chance to exercise their Opt-Out rights in accordance with Section 3.4 and prior to the Participants approval of a Third Phase Agreement in accordance with the NCPA Facilities Agreement;

1.1.30 “NGPP Resource” means a Proposed Resource that has been approved as an NGPP Resource in accordance with Section 3.4.

1.1.31 “Participant” has the meaning set forth in the preamble hereto.

1.1.32 “Participant Representative” has the meaning set forth in Section 6.4 with respect to the NGPP Oversight Committee.

1.1.33 “Party” or “Parties” has the meaning set forth in the preamble hereto.

1.1.34 “Participation Percentages” has the meaning set forth in Section 7.1.

1.1.35 “Power Purchase Agreement” or “PPA” means an agreement executed by NCPA, or to be executed by NCPA, for the purchase and delivery of electric energy, capacity or other energy services and Environmental Attributes.

1.1.36 “Preliminary Resource Schedule” means a “Resource Schedule” substantially in the form of Exhibit B submitted to the NCPA Commission as an initial evaluation of responses to a Request for Proposals for the purposes of allowing Participants to make an election to Opt-Out of further participation with respect to an otherwise Eligible Renewable Resource in accordance with sections 3.4 and 6.2 below.

1.1.37 “Procure” and other forms of such verb, including Procurement, Procuring, and Procured, means acquiring the output of Eligible Renewable Resources, including all Environmental Attributes associated with any electricity generated in connection therewith, through contracts with facilities owned by third parties, by purchasing existing Eligible Renewable Resources, by developing, constructing, installing, owning, operating, maintaining, and controlling Eligible Renewable Resources, or such other means as may be approved by the Participants from time to time.

1.1.38 “Procurement Conditions” has the meaning set forth in Section 3.1.

1.1.39 “Proposed Resource” has the meaning set forth in Section 3.3.1.

1.1.40 “Request for Proposals” means the solicitation of competitive bids from third parties to supply Eligible Renewable Resources under this Agreement, substantially in the form of Exhibit F attached hereto.

1.1.41 “Resource Allocation Percentage” means a Participant’s Participation Percentage as adjusted according to the terms of this Amended Agreement by reason of one or more Participant’s exercise of their Opt-Out rights.

1.1.42 “Resource Schedule” means a Resource Schedule, substantially in the form of Exhibit B, identifying the location of the Proposed Resource, its size and technology, type of Procurement, the estimated costs (both total and per MWh) and underlying assumptions, key milestone dates (such as commercial operation date and delivery period), a description of the definitive agreements, a proposed budget for pursuing the Procurement of electricity from the Proposed Resource and a proposed mechanism for financing the Procurement.

1.1.43 “Revenues” means, with respect to each Participant with the exception of BART, all income, rents, rates, fees, charges, and other

moneys derived by the Participant from the ownership or operation of its Electric System, including, without limiting the generality of the foregoing, (a) all income, rents, rates, fees, charges or other moneys derived from the sale, furnishing and supplying of electric capacity and energy and other services, facilities, and commodities sold, furnished, or supplied through the facilities of its Electric System, (b) the earnings on and income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to law to its Electric System and (c) the proceeds derived by the Participant directly or indirectly from the sale, lease or other disposition of all or a part of the Electric System, but the term Revenues shall not include (i) customers' deposits or any other deposits subject to refund until such deposits have become the property of the Participant or (ii) contributions from customers for the payment of costs of construction of facilities to serve them. In regard to BART, BART shall generate revenues sufficient to cover its obligations under this Amended Agreement through tariffs, fees, or other sources of revenue except through such sources as may be limited by law.

1.1.44 "Scheduling Protocols" means the contractual or other arrangements between NCPA and the relevant Participant concerning the scheduling, delivery and metering of electricity.

1.1.45 "Security Account" means the account established by NCPA and funded by the Participants in accordance with Section 5.5, the funds of which are available for use by NCPA in accordance with the terms and conditions hereof.

1.1.46 "Term" has the meaning set forth in Section 8.

1.1.47 "Voting Member" means a party to the Joint Powers Agreement.

1.1.48 "Withdrawing Participant" has the meaning set forth in Section 7.3.

1.2 Rules of Interpretation.

As used in this Amended Agreement (including the Recitals hereto), unless in any such case the context requires otherwise: the terms "herein," "hereto," "herewith" and "hereof" are references to this Amended Agreement taken as a whole and not to any particular provision; the term "include," "includes" or "including" shall mean "including, for example and without limitation;" and references to a "Section," "subsection," "clause," or "Exhibit" shall mean a Section, subsection, clause or Exhibit of this Amended Agreement, as the case may be. All references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made, and reference to a law, regulation or ordinance includes any

amendment or modification thereof. A reference to a "person" includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity, in each case whether or not having a separate legal personality and includes its successors and permitted assigns. The singular shall include the plural and the masculine shall include the feminine, and *vice versa*.

Section 2. Effective Date of Agreement.

This Amended Agreement shall become effective upon the latest date of execution by a Party hereto ("Effective Date"), provided that all the Participants listed in Exhibit A have executed the Amended Agreement prior to January 31, 2008, upon which, NCPA's General Manager shall notify all Participants of the Effective Date. A copy of such notification shall be affixed to the official copy of this Amended Agreement.

Section 3. Procurement Process.

3.1 Request for Proposals and PPA(s).

All procurement activities undertaken pursuant to this Amended Agreement shall be in accordance with the form of Request for Proposals and accompanying PPA(s) attached hereto and incorporated herein by reference as Exhibits F & G

respectively, as may be amended in accordance with Section 10.5. NCPA represents that the following conditions will be observed when undertaking its procurement activities ("Procurement Conditions"):

- (i) Each Proposed Resource shall be an Eligible Renewable Resource;
- (ii) The Average Capacity of all NGPP Resources shall not exceed the Maximum Average Capacity;
- (iii) The period of time for which NCPA is obligated to accept and pay for electricity under any singular PPA shall not exceed twenty-five years;
- (iv) The Contract Price for purchasing electricity under any singular PPA shall not exceed the Maximum Contract Price;
- (v) The PPA(s) will be approved as to form by NCPA's General Counsel;
- (vi) Where Procurement of electricity from a Proposed Resource requires that NCPA obtain financing, each PPA shall be subject to NCPA obtaining reasonable financing; and
- (vii) All Environmental Attributes associated with the Proposed Resource will be transferred to NCPA;

3.2 Participant Approval of Procurement Process.

By executing this Amended Agreement, the Participant acknowledges and agrees to be bound by the procurement process contained in or referenced by the Request for Proposals and PPA(s) approved by the Participants pursuant to Section 6.2 as provided for herein.

3.3 Approval of NGPP Resources.

AMENDED THIRD PHASE AGREEMENT - NCPA GREEN POWER POOL

3.3.1 Identification of Resources and Request for Review.

For all Eligible Renewable Resource that NCPA seeks to include as a NGPP Resource ("Proposed Resource"), NCPA will present to the Commission a Preliminary Resource Schedule, substantially in the form of Exhibit B attached hereto, together with an estimated budget for completing the acquisition and or development of the Proposed Resource. Notwithstanding any other provision in this Amended Agreement to the contrary, at the time the Proposed Resource is submitted to the Commission, each Participant shall be afforded an opportunity to discontinue their participation in the Procurement ("Opt-Out") of an otherwise Eligible Renewable Resource consistent with the procedures provided in section 6.2 below, and within the following time limitations:

- (i) At the first NCPA Commission meeting following the Effective Date each Participant shall be provided with a Preliminary Resource Schedule and estimated budget for all Proposed Resources qualifying under the initial Request for Proposals issued on September 25, 2006.
- (ii) For each Request for Proposals issued after the Effective Date, NCPA shall prepare a Preliminary Resource Schedule and estimated budget based upon the best information available to NCPA staff within 180 days of the date of issuance of the Request for Proposals, and submit it to the Participants at the next regularly scheduled NCPA Commission meeting.

3.3.2 Review by Oversight Committee. At the General Manager's discretion, the NGPP Oversight Committee may be requested to

review and provide written comments and recommendations to NCPA on whether to include the relevant Proposed Resource as an NGPP Resource. If the General Manager so requests, the NGPP Oversight Committee shall be provided with copies of relevant PPA(s) proposed to be executed by prospective counterparties any other information or materials prepared in connection with the evaluation of such Eligible Renewable Resource and produce such other summaries or analyses as the Commission or the NGPP Oversight Committee may reasonably request.

3.3.3 Action by NCPA. NCPA shall take action to add a Proposed Resource as a NGPP Resource for those Participants choosing not to Opt-Out of participating in the acquisition of an otherwise Eligible Renewable Resource pursuant to the provisions of Sections 3.3 and 6.2.

3.4 Additional Provisions Related to Development Opportunities. NCPA shall conduct investigations and analysis of potential development opportunities for Eligible Renewable Resources on behalf of the Participants. Such investigations and analysis may include but are not limited to: resource selection, market analysis, site acquisition, cost analysis of permitting and construction and partnership opportunities. At the General Manager's discretion, the NGPP Oversight Committee may review the recommendations of NCPA and comment accordingly. NCPA shall annually budget for these developmental expenditures as part of the NGPP Program Budget

The Participants agree that any decision to acquire a physical resource asset shall be made pursuant to Section 6.2 and shall be subject to the terms and conditions of a new development Third Phase Agreement undertaken in accordance with the Facilities Agreement. At the time the Third Phase Agreement is presented to the Commission for finalizing the development of an Eligible Renewable Resource the remaining Participants shall also be provided with a final opportunity to Opt-Out of the acquisition of the Proposed Resources. Should a Participant exercise its Opt-Out right at this stage the remaining Participants' Resource Allocation Percentages shall be adjusted proportionately, and the remaining Participants shall be liable for, and entitled to, the remaining costs and benefits of acquiring the Proposed Resources. No NCPA action related to development opportunities shall require any Participant to commit to more power than its Average MW Participant election stated in Exhibit A.

3.5 Delivery of Electricity / Allocation of Environmental Attributes. Any electricity delivered to NCPA from an NGPP Resource shall be delivered to each Participant in accordance with such Participant's Participation Percentage, or Resource Allocation Percentage as applicable, and each Participant shall accept and pay for its relevant percentage of such electricity. NCPA may allocate electricity generated by, and/or delivered to NCPA from, any particular NGPP Resource among the Participants in such percentages as NCPA may, in its reasonable discretion and subject to the approval of the

affected Participant, determine are necessary, desirable, or appropriate; provided that the aggregate quantity of electricity delivered to any Participant during a calendar month shall equal such Participant's Participation Percentage, or Resource Allocation Percentage as applicable, of the aggregate amount of electricity generated and/or delivered to NCPA from all NGPP Resources during the relevant calendar month. Such electricity shall be delivered to the Participants in accordance with the Scheduling Protocols. Environmental Attributes, as defined herein, obtained by NCPA as a result of performance under this Amended Agreement shall likewise be transferred to each Participant in accordance with such Participant's Participation Percentage, or Resource Allocation Percentage as applicable.

3.6 Capacity Entitlement.

The collective capacity available from the NGPP Resources for planning and reliability purposes shall be allocated among the Participants in accordance with their respective Participation Percentage, or Resource Allocation Percentage as applicable.

3.7 Payments to Counterparties.

NCPA shall pay all NGPP Project Costs using operating or Security Account funds from amounts paid to NCPA in accordance with Section 5, or such other sources as may be agreed upon in writing by the Parties from time to time.

3.8 Removal of NGPP Resources from NGPP.

Any NGPP Resource that delivers electricity to NCPA under a PPA shall be automatically removed from the NGPP on the date its PPA terminates or expires. Any other NGPP Resource shall continue to be included in the NGPP until such time as the Participants approve removing it from the NGPP and approves the subsequent use of such NGPP Resource, including whether such NGPP Resource should be sold or decommissioned pursuant to Section 6.2. Any proceeds or costs associated with removing an NGPP Resource from the NGPP shall be allocated among the Participants in accordance with the Participation Percentages, or Resource Allocation Percentages as applicable, unless otherwise agreed upon in writing by the Participants.

Section 4. Cooperation and Further Assurances.

Each of the Parties agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by any other Party which are not inconsistent with the provisions of this Amended Agreement and which do not involve the assumption of obligations other than those provided for in this Amended Agreement, in order to give full effect to this Amended Agreement and to carry out the intent of this Amended Agreement. Further, the Parties agree to cooperate and act in good faith in connection with obtaining any financing

required in order to Procure electricity from an NGPP Resource, including with respect to negotiating and executing any agreements to implement any financing arrangements.

Section 5. Budget, Operating Fund, Invoicing.

5.1 “NGPP Cost Allocation.”

NGPP Program Costs allocated to the Participants under this Amended Agreement and through the NCPA Annual Budget shall be in proportion to the Participation Percentages; or in case a Participant elects to Opt-Out of the procurement of a Proposed Resource, NGPP PPA Costs and NGPP Development Costs shall be allocated to the Participants in proportion to the Resource Allocation Percentages for the Proposed Resource as detailed in Exhibit A.

5.2 Payment of NGPP Project Costs.

Each Participant shall be obligated to pay NCPA for its allocated share of NGPP Project Costs in proportion to its Participation Percentage, or Resource Allocation Percentage as applicable, and shall maintain working capital in accordance with NCPA's Annual Budget, and fund its Security Account obligation as required under this Amended Agreement.

5.3 Applicable Percentages of NGPP Project Costs and Budgets.

Each Participant's applicable share of NGPP Program Costs shall be in proportion to its Participation Percentage. If a Participant has exercised its

right(s) to Opt-Out of an otherwise Eligible Resource, the remaining Participants' share of NGPP PPA Costs or NGPP Development Costs shall be in proportion to their applicable Resource Allocation Percentages. NCPA shall be responsible for insuring that the respective budget estimates for each such category of costs are settled in accordance with Section 5.4.3 below.

5.4 Budgets and Budget Settlements.

5.4.1 Relation to the NCPA Annual Budget. Prior to the beginning of each fiscal year for which no budget has been adopted and for each fiscal year for which a budget will be adopted, NCPA, in conjunction with the Participants, shall prepare and deliver to each Participant a NGPP Project Budget estimating the NGPP Project Costs expected to be incurred over such fiscal year as a result of this Amended Agreement. Any Participant may request a detailed accounting of NCPA costs included as NGPP Project Costs in the NCPA Annual Budget and such Participant shall pay the reasonable costs of such accounting review.

5.4.2 The Participants' financial obligation to pay for costs under this Amended Agreement shall be adjusted if any Participant chooses to discontinue its participation in the acquisition of a Proposed Resource in accordance with the "Opt-Out" provision in section 3.4, upon which, each Participant's Project Participation Percentages shall be converted to Resource Allocation Percentages as a separate schedule to Exhibit A. Each Participant

exercising its right to Opt-Out of the acquisition process for a Proposed Resource shall be deemed to have a Resource Allocation Percentage of zero percent (0%) for that Proposed Resource, and shall cease to be obligated for those costs NCPA incurs going forward to acquire that resource but, remain obligated for costs incurred up to the date that the Participant exercised its right to Opt-Out. The Project Participation Percentages for those Participants that do not Opt-Out of the acquisition of a Proposed Resource shall be increased proportionately to assume the financial obligations of Participant(s) choosing to Opt-Out of a Proposed Resource. NCPA will promptly inform Participants of budget and cost allocation changes associated with Participant decisions to Opt-Out of otherwise eligible resource acquisitions.

5.4.3 Final NGPP Budget Settlement. A final NGPP Project Budget settlement for the prior fiscal year will be produced each year after the annual audit is completed. This shall normally occur on or prior to December 1 of each year.

5.5 Security Account.

5.5.1 Initial Deposit. Prior to the procurement of new Eligible Renewable Resources, but not later than the beginning of a new fiscal year at NCPA, each Participant shall deposit into the security account its estimated obligation for NGPP Project Costs. The amount of the deposit shall be an amount equal to each Participant's Participation Percentage, or Resource

Allocation Percentage, as applicable, of the three (3) highest months of: (a) the new fiscal year, or (b) the then immediately following twelve (12) months of NGPP Project Costs as that term is defined in Section 1.1.29 of this Amended Agreement.

5.5.2 Subsequent Deposits. Quarterly, and within thirty (30) days following execution by NCPA of any PPA or any financing commitment for the development of an Eligible Renewable Resource, NCPA shall review and revise its estimate of NGPP PPA Costs for the succeeding twelve (12) months. Following such review, NCPA shall determine whether each Participant has a sufficient balance in the Security Account. To the extent that any Participant's balance in the Security Account is greater than one hundred and ten percent (110%) of the deposit amount defined in section 5.5.1, NCPA shall credit such amount to the Participant's next invoice. To the extent that any Participant's balance in the Security Account is less than ninety percent (90%) of the deposit amount defined in section 5.5.1, NCPA shall add to such Participant's next invoice an amount necessary to cause such Participant's balance in the Security Account to be sufficient.

5.5.3 Use of Security Account Funds. NCPA may use any and all funds deposited into the Security Account to pay any NGPP Project Costs, including making payments to counterparties under any PPA, payment of consultants, attorneys and accountants performing services related to

Procurement activities, reimbursing NCPA for its internal costs associated with performing its obligations under this Amended Agreement, and paying any Claims, without regard to any individual Participant's balance in the Security Account or proportionate share of NGPP Project Costs and irrespective of whether NCPA has issued an invoice for such NGPP Project Costs to the Participants or whether a Participant has made timely payments of invoices.

5.5.4 Special or Emergency Assessments. In the event that the funds in the Security Account are insufficient to allow payment of an invoice, demand, request for further assurances, or Claims, NCPA shall notify all Participants and then prepare and send a special or emergency assessment to the Participants. Each Participant shall pay to NCPA such assessment when and if assessed by NCPA within five (5) Business Days following the invoice date of the assessment.

5.5.5 Accounting and Interest. NCPA shall maintain a record of each Participant's deposits into and payments from the Security Account. Interest earned on the Security Account shall be credited to the Participants in accordance with the Participants share of the balance in the Security Account. Any losses in the Security Account shall be allocated among the Participants in accordance with their Participation Percentages.

5.5.6 Return of Funds. On the termination of this Amended Agreement with respect to a Participant or a permitted withdrawal of

a Participant in accordance with this Amended Agreement, the affected Participant or Participants may apply to NCPA for the return of their share of Security Account funds ninety (90) days after the effective date of such termination or withdrawal. NCPA shall, in its sole discretion, as determined by a vote of the Participants, excluding the vote of the withdrawing or terminated Participant(s) that are members thereof, estimate the then outstanding liabilities of the Participant(s), including any estimated contingent liabilities and shall retain all such funds until all such liabilities have been fully paid or otherwise satisfied in full. The balance of the Participant's share of the Security Account will be refunded to the Participant.

5.6 Invoicing.

5.6.1 Invoices. As part of NCPA's regular, monthly, advance billing or by separate special invoice, as required in the circumstances, NCPA will issue an invoice to each Participant for its proportionate share of the NGPP Project Costs (or any adjustments thereto) based on such Participant's Participation Percentage and/or Resource Allocation Percentages as applicable. Such invoice may include estimated costs and estimated settlement and meter data. Each invoice shall include: (i) the total NGPP Project Costs for such month and the relevant Participant's share thereof; (ii) the quantity of electricity and Environmental Attributes, by NGPP Resource, procured on behalf of such Participant (or an estimate thereof) and the unit price for such electricity; (iii)

appropriate settlement and meter data (or an estimate thereof); (iv) any adjustments to prior invoices required based on actual data received that was estimated in a previous invoice; (v) notice of the amount, if any, that NCPA has paid or expects to pay using funds available in the Security Account; and (vi) amounts due from (or credited to) such Participant under Section 5.5.2.

5.6.2 Payment of Invoices. All invoices delivered by NCPA hereunder are due and payable no later than thirty (30) days following the invoice date; provided, however, that any amount due on a day other than a Business Day may be paid on the following Business Day. NCPA may apply a Participant's share of the Security Account to the payment of all or any portion of an invoice issued to such Participant, provided that application of such funds from the Security Account shall not relieve the Participant from any late payment charges pursuant to Section 5.6.3. To the extent that NCPA applies funds from the Security Account to pay an amount due under an invoice, following receipt of payment of such invoice by the relevant Participant, NCPA shall deposit the relevant portion of the payment into the Security Account and credit such deposit to such Participant.

5.6.3 Late Payments. Any amount due and not paid by a Participant in accordance with Section 5.6.2 shall bear interest computed on a daily basis until paid at the lesser of (i) the per annum prime rate (or reference

rate) of the Bank of America NT&SA then in effect, plus two percent (2%) or (ii) the maximum rate permitted by law.

5.7 Auditing and Settlement Data.

5.7.1 Settlement Data. NCPA will make metering and settlement data available to the Participants. Procedures and formats for the provision of such data will be as established by the Participants and NCPA from time to time.

5.7.2 Audit Rights. Each Participant shall have the right to audit any data created or maintained by NCPA pursuant to this Amended Agreement on thirty (30) days prior written notice (unless otherwise agreed by NCPA). All audit rights shall be exercised in accordance with the rules and procedures adopted by NCPA.

5.8 Revenue Covenant

Any failure of a Participant to meet its obligations hereunder or to cure such failure in a timely manner shall constitute a Default and the Defaulting Party shall be subject to such remedies of NCPA as provided for herein. Each Participant covenants and agrees (i) to continue to pay or advance to NCPA, from its electric department revenues only or, in the case of BART, its tariffs, fees or other sources of revenue provided that such sources shall not include any sums derived from sources the use of which is limited by law to expenditures other than operating expenses, its percentage share of the costs authorized by

Participants in accordance with this Amended Agreement in connection with its participation in the Project. Each Participant further agrees that it will fix the rates and charges for services provided by its electric department, or in the case of BART, its general revenues, so that it will at all times have sufficient money in its department revenue funds to meet this obligation; (ii) to make payments under this Amended Agreement from the Revenues of, and as an operating expense of, its Electric System, or in the case of BART, its general revenues; (iii) to make payments under this Amended Agreement whether or not there is an interruption in, interference with, or reduction or suspension of services provided under this Amended Agreement; such payments not being subject to any reduction, whether by offset or otherwise, and regardless of whether any dispute exists provided such interruption, interference or reduction in services is caused by forces constituting an Act of God and not reasonably contemplated by the Parties; and (iv) to operate its Electric Systems, or in the case of BART, its transit system, in an efficient manner and to maintain its facilities in good repair, condition and working order so that: (a) the Participant's obligations to make payments under this Amended Agreement are not adversely affected or threatened; and (b) NCPA's bond rating and ability to negotiate and enter into a Power Purchase Agreement are not adversely affected or threatened.

Section 6. Administration of Agreement.

6.1 General.

NCPA has the sole overall responsibility and authority for the administration of this Amended Agreement. Any acts, decisions or approvals taken, made or sought by NCPA under this Amended Agreement shall be taken, made or sought, as applicable, in accordance with NCPA's Constitutive Documents and Section 6.2.

6.2 Action by Participants.

(a) Forum: Whenever any action anticipated by this Amended Agreement is required to be taken by the Participants, including but not limited to, the expressed authorization to add or to detract from the list of Eligible Renewable Resources, such actions shall be taken at a regular or special meeting of the NCPA Commission but shall be participated in only by those Commissioners, or their designated alternates, who are Participants.

(b) Quorum: A quorum at NCPA Commission meetings for purposes of acting upon matters relating to this Amended Agreement shall consist of Commissioners, or their designated alternates representing at least three Participants having a combined majority interest based upon Participation Percentages. Should the number of Participants choosing to Opt-Out of the procurement of an otherwise Eligible Renewable Resource reduce the number of remaining Participants to three or less, then a quorum shall consist of all remaining Participants.

(c) Voting: Each Participant shall have the right to cast one vote with respect to matters pertaining to this Amended Agreement, with a majority vote of the Participants required for action subject to the following exceptions;

- i. Upon request of any Participant representative, the voting on an issue shall be by Participation Percentage with a 65% or more favorable vote from two or more Participants necessary to carry the action.
- ii. After any decision related to this Amended Agreement is taken by the affirmative vote of Participants holding Participation Percentages of less than 65%, the action can be reviewed and revised if a Participant gives notice of intention to seek such review and revision to NCPA and each of the other Participants within ten (10) days following the date on which such action was taken. Upon receipt of such a request for reconsideration, the chairman of the Commission shall agendize the matter for reconsideration at the next regular meeting of the Commission or at a special meeting if the circumstances so warrant. The action shall be upheld upon the affirmative vote of authorized representatives of two or more Participants holding at least 65% of the total Participation Percentages. Any action taken upon reconsideration shall be final.
- iii. Any one Participant may exercise its right to Opt-Out of an otherwise Eligible Renewable Resource acquisition without regard to the action of any other Participant. Any Participant who Opts-Out of an otherwise Eligible Resource shall abstain from voting thereafter as to issues relating to that resource.

6.3 NGPP Oversight Committee.

NCPA may seek input and recommendations from the Participants regarding performance under this Amended Agreement. Accordingly, the General Manager of NCPA may establish, in his discretion, a committee comprised of Participant Representatives which may meet from time to time. Such committee shall be referred to as the NGPP Oversight Committee. The NGPP Oversight Committee may report to NCPA staff or the General Manager of NCPA, as the General Manager deems appropriate. The NGPP Oversight Committee may adopt rules of procedure consistent with the provisions of this Amended Agreement as it deems appropriate.

6.4 Participant Representatives.

If the General Manager establishes an NGPP Oversight Committee, each Participant shall:

- (i) Authorize and designate one representative ("Participant Representative"), and in its discretion, one or more alternates ("Designated Alternate") to serve on the NGPP Oversight Committee;
- (ii) Authorize its Participant Representative and Designated Alternates to vote on behalf of such Participant on recommendations on matters pertaining to this Amended Agreement; and
- (iii) Deliver to NCPA, written notice containing the name and contact information of such Participant's Participant Representative and Designated Alternate(s), if any.

Section 7. Participation Percentage; Admission and Withdrawal of Participants.

7.1 Participation Percentages and Resource Allocation Percentages.

The Participation Percentages and Resource Allocation Percentages of each Participant are as set forth in Exhibit A, as the same may be modified from time to time in accordance with the terms and conditions hereof.

7.2 Admission of New Participants.

Following the Effective Date of this Amended Agreement, no Member ("Additional Member") may execute this Amended Agreement and become a Participant unless one or more of the Participants ("Allocating Participants") elect to allocate a portion of its Participant Percentage to such Member. Upon agreement of the Allocating Participant and the Additional Member, the Additional Member shall deliver to NCPA and each other Participant the written agreement between the Additional Member and the Allocating Participant(s) indicating the agreed upon change in Participation Percentage(s), a counterpart of this Amended Agreement executed by the Additional Member, evidence that such agreements have been approved in accordance with its applicable Constitutive Documents and payment of such Member's share of the Security Account. Any reduction in any Allocating Participant's share of the Security Account shall be credited to the Allocating Participants in accordance with

Section 5.5.2. Upon receipt of all required documents, NCPA shall provide to all Participants, an updated Exhibit A reflecting the revised Participation Percentages.

7.3 Withdrawal of Participants.

7.3.1 Requirements and Process. Subsequent to the Effective Date of this Amended Agreement, any Participant may voluntarily withdraw from this Amended Agreement ("Withdrawing Participant") upon written agreement with one or more Participants ("Adjusting Participant") to assume the Withdrawing Participant's full Participation Percentage and provided further that such withdrawal does not violate any applicable financing conditions. The Withdrawing Participant shall provide notice of intent to withdraw to NCPA together with the applicable agreement between the Withdrawing Participant and the Adjusting Participant(s) regarding assumption of the Withdrawing Participant's Participation Percentage along with evidence that such agreement was approved in accordance with applicable Constitutive Documents. Upon receipt of all required documents, NCPA shall send a revised Exhibit A to all Participants reflecting the new allocation of Participation Percentages.

7.3.2 Associated Costs. A Withdrawing Participant shall reimburse NCPA for any and all costs resulting from its withdrawal, including but not limited to the legal, accounting, and administrative costs of winding up

and assuring the complete satisfaction and discharge of the Withdrawing Participant's obligations.

7.3.3 No Effect on Prior Liabilities. Withdrawal by any Participant will not terminate any ongoing or un-discharged contingent liabilities or obligations resulting from this Amended Agreement until they are satisfied in full or such Withdrawing Participant has provided a mechanism reasonably acceptable to NCPA and the remaining Participants, for the satisfaction in full thereof.

Section 8. Term and Termination.

The term ("Term") of this Amended Agreement shall commence on the Effective Date and shall continue until (i) terminated by consent of all of the Participants that have not previously withdrawn from this Amended Agreement in accordance with Section 7.3 or otherwise voluntarily or involuntarily had their participation in this Amended Agreement terminated or (ii) all NGPP Resources have been removed from the NGPP.

Section 9. Default and Remedies

9.1 Events of Default.

An event of default under this Amended Agreement shall exist with respect to a Party ("Defaulting Party") upon the occurrence of any one or more of the following:

- (i) if any Party fails to make any payment when due hereunder five (5) Business Days after receipt of notice given by NCPA of such non-payment; or
- (ii) if any Party fails to perform any other covenant or obligation under this Amended Agreement where such failure is not cured within ten (10) days following receipt of a notice from NCPA demanding cure (provided that this shall not apply to any failure to make payments (which is covered by Section 9.1 (i))); or
- (iii) if any representation or warranty of any Party material to the transactions contemplated hereby shall prove to have been false or misleading in any material respect when made and that Party does not cure the facts underlying such incorrect representation or warranty so that the representation or warranty is corrected, to the satisfaction to the other Participants, within ten (10) days of the date of receipt of notice from any other Party demanding cure; or
- (iv) if any Party is in default or in breach of any of its covenants under any other agreement with NCPA and such default or breach is not cured within the time periods specified in such agreement; or
- (v) the failure of NCPA to perform any covenant or obligation under this Amended Agreement following a ten (10) day notice to cure by any non-defaulting Participant.

9.2 Cure of an Event of Default.

An Event of Default shall be deemed cured only if such default shall be remedied within the time period specified in Section 9.1, above, as may be applicable after written notice has been sent to the Defaulting Party from NCPA specifying the default and demanding that the same be remedied provided that failure of a Party to provide such notice shall not be deemed a waiver of such

default. If such default is not reasonably capable of cure within the applicable time period specified herein, then the default shall not be deemed an Event of Default if the Defaulting Party commences to remedy the default within the applicable time period specified herein and thereafter diligently pursues such remedy until such default is fully cured; provided, however, that in no event shall any Party be entitled to longer than thirty (30) days to cure an Event of Default with respect to any payment obligation under this Amended Agreement after receipt of written notice thereof.

9.3 Participation Rights of Defaulting Party.

Notwithstanding anything herein to the contrary, upon the occurrence of an Event of Default and until such Event of Default is cured, the Participant that is the Defaulting Party shall not have the right to participate under Section 6.2 on any matter with respect to this Amended Agreement.

9.4 Remedies in the Event of Default.

9.4.1. Remedies of NCPA. Upon the occurrence of an Event of Default where a Participant is the Defaulting Party, without limiting its other rights or remedies available under this Amended Agreement, at law or in equity, and without constituting or resulting in a waiver, release or estoppel of any right, action or cause of action NCPA may have against the Participant, NCPA may:

- (i) suspend the provision of services under this Amended Agreement to such Defaulting Party, including the delivery of electricity and other

attributes of any NGPP Resources until the Event of Default is cured;

- (ii) demand that the Defaulting Party provide further assurances that it is ready, willing and able to meet its obligations under this Amended Agreement; and
- (iii) terminate this Amended Agreement as to the Defaulting Party on ten (10) days prior written notice to the Defaulting Party and following approval of the non-defaulting Participants; and
- (iv) Subject to limitations as otherwise referenced in this Amended Agreement, NCPA shall have the right to pursue all remedies under law or in equity against any Defaulting Participant in curing or mitigating such default. Any Defaulting Party shall remain liable under this Amended Agreement for any damages resulting from such default including damages resulting from subsequent purchases as authorized by this Amended Agreement.

9.4.2 Sale/Transfer of Participants Account Upon Default.

Upon any default of a Participant caused by the failure of such Participant to pay any sums due, and provided that such default is not cured in a timely manner, then NCPA shall use its best efforts to sell and transfer for the defaulting Participant's account all or a portion of the Participant's capacity and/or energy and/or Environmental Attributes for the remainder of the term of this Amended Agreement. The price to be paid to NCPA by the Non-Defaulting Participants for the Defaulting Participant's capacity, energy, or environmental attributes shall be at cost as opposed to market price. The Defaulting party shall receive no compensation from such sale. Notwithstanding that all or any portion of the Participant's capacity, energy or environmental attributes is sold or transferred,

the Participant shall remain liable for all of its obligations hereunder unless released therefrom by NCPA and the transferee upon assumption by the transferee. To the extent that any portion of the defaulting Participant's capacity and/or energy is unable to be sold by NCPA, then the Participation Percentages of each non-defaulting Participant shall be automatically increased for the remaining term of this Amended Agreement pro-rata with those of the other non-defaulting Participants and the defaulting Participant's Participation Percentage be reduced accordingly, but only for the purpose of computing the Percentages of the non-defaulting Participants. The sum of any increases of a non-defaulting Participant's Participation Percentage shall not exceed twenty-five (25) percent of the non-defaulting Participant's original Participation Percentage on an accumulated basis without the written consent of such non-defaulting Participant.

9.4.3 Remedies of Participants. Upon the occurrence of an Event of Default, and following the applicable cure periods, where NCPA is the Defaulting Party, the Participants may, without limiting their other rights or remedies available under this Amended Agreement, at law or in equity, and without constituting or resulting in a waiver, release or estoppel of any right, action or cause of action the Participants may have against NCPA, terminate this Amended Agreement in whole, subject to the provisions of Section 9.5.4.

9.4.4 Special Covenants Regarding Security Account. In the event that a Participant's balance in the Security Account is insufficient to cover all invoices for NGPP Project Costs sent to such Participant, then, without limiting NCPA's other rights or remedies available under this Amended Agreement, at law or inequity, such Participant shall cooperate in good faith with NCPA and shall cure the default as rapidly as possible, on an emergency basis, taking all such action as is necessary, including, but not limited to, raising rates and charges to its customers to increase its Revenues to replenish its share of the Security Account as provided herein, drawing on its cash-on-hand and lines of credit, obtaining further assurances by way of credit support and letters of credit, and taking all such other action as will cure the default quickly and without delay.

9.5 Effect of Termination or Suspension.

9.5.1 Generally. The suspension or termination of this Amended Agreement will not terminate, waive, or otherwise discharge any ongoing or undischarged liabilities, contingent liabilities or obligations arising from this Amended Agreement until such obligations are satisfied in full, and all of the costs incurred by NCPA in connection with such suspension or termination, including reasonable attorney fees, the fees and expenses of other experts, including auditors and accountants, other costs and expenses that NCPA

is entitled to recover under this Amended Agreement, and other reasonable and necessary costs associated with any and all of the remedies, are paid in full.

9.5.2 Suspension by NCPA. If performance of all or any portion of this Amended Agreement is suspended by NCPA with respect to a Participant in accordance with Section 9.4.1 (i), such Participant shall pay any and all costs incurred by NCPA as a result of such suspension including reasonable attorney fees, the fees and expenses of other experts, including auditors and accountants, other reasonable and necessary costs associated with such suspension and any portion of the NGPP Project Costs that were not recovered from such Participant as a result of such suspension.

9.5.3 Termination by NCPA. If this Amended Agreement is terminated by NCPA with respect to a Participant in accordance with Section 9.4.1 (iii), (i) such Participant shall pay any and all costs incurred by NCPA as a result of such termination including reasonable attorney fees, the fees and expenses of other experts, including auditors and accountants, other reasonable and necessary costs associated with such suspension and any portion of the NGPP Project Costs that were not, or will not be, recovered from such Participant as a result of such termination, and (ii) such Participant's Participation Percentage shall be allocated among the remaining Participants in like manner as defined in Section 9.4.2; provided however, if NCPA terminates this Amended

Agreement with respect to the last remaining Participant, then this Amended Agreement shall terminate.

9.5.4 Termination by Participants. If this Amended Agreement is terminated by all Participants in accordance with Section 9.4.3, or by unanimous consent of all of the Parties hereto, then the Participants shall pay to NCPA all previously unpaid NGPP Project Costs incurred as of the date of such termination, and following such termination, the Participants shall cooperate and act in good faith to negotiate and agree upon the method of allocating among the Participants in proportion to their respective Participation Percentages the costs and benefits of the NGPP Resources, all PPAs then in effect, and any financing agreements or commitments and any matters pertaining to the administration, management, control, operation and maintenance of the NGPP Resources. NCPA shall reasonably cooperate with the Participants in connection with implementing the foregoing and the Participants shall indemnify NCPA for any costs incurred in connection therewith, including reasonable attorney fees, fees and expenses of other experts, including auditors and accountants and other reasonable and necessary costs. If the Parties are unable to reach agreement as to the foregoing, then the Parties agree to submit the matter to mediation with a mutually agreed upon mediator. If the Parties are still unable to reach agreement following mediation, then the matter shall be submitted to binding arbitration subject to the rules of the American Arbitration Association, the costs of such

arbitration, including NCPA's costs, being borne in proportion among the Participants according to their Participation Percentages.

Section 10. Miscellaneous.

10.1 Confidentiality.

The Participants and NCPA will keep confidential all confidential or trade secret information made available to them in connection with this Amended Agreement, to the extent possible, consistent with applicable laws, including the California Public Records Act and the California Constitution. It shall be the responsibility of the holder of the claim of confidentiality or trade secret to defend at its expense against any request that such information be disclosed. Confidential or trade secret information shall be marked or expressly identified as such.

10.2 Indemnification and Hold Harmless.

Subject to the provisions of Section 10.4, each Participant agrees to indemnify, defend and hold harmless NCPA and its Members, including their respective entities governing officials, officers, agents, and employees, from and against any and all claims, suits, losses, costs, damages, expenses and liability of any kind or nature, including reasonable attorneys' fees and the costs of litigation, including experts ("Claims"), to the extent caused by any acts, omissions, breach of contract, negligence (active or passive), gross negligence, recklessness, or willful

misconduct of a Participant, its governing officials, officers, employees, subcontractors or agents, to the maximum extent permitted by law.

10.3 Several Liabilities.

No Participant shall be liable under this Amended Agreement for the obligations of any other Participant, and each Participant shall be solely responsible and liable for performance of its obligations under this Amended Agreement, except as otherwise provided for herein, and the obligation of each Participant under this Amended Agreement is a several obligation and not a joint obligation with those of the other Participants.

10.4 No Consequential Damages.

FOR ANY BREACH OF ANY PROVISION OF THIS AMENDED AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AMENDED AGREEMENT, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER DAMAGES OR REMEDIES ARE HEREBY WAIVED. IF NO REMEDY OR MEASURE OF DAMAGE IS EXPRESSLY PROVIDED, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE HEREBY WAIVED. IN NO EVENT SHALL NCPA OR ANY PARTICIPANT OR THEIR RESPECTIVE SUCCESSORS, ASSIGNS, REPRESENTATIVES, DIRECTORS, OFFICERS, AGENTS, OR EMPLOYEES BE

LIABLE FOR ANY LOST PROFITS, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INDIRECT, PUNITIVE OR INCIDENTAL LOSSES OR DAMAGES, INCLUDING LOSS OF USE, LOSS OF GOODWILL, LOST REVENUES, LOSS OF PROFIT OR LOSS OF CONTRACTS EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NCPA AND EACH PARTICIPANT EACH HEREBY RELEASES EACH OTHER AND EACH OF SUCH PERSONS FROM ANY SUCH LIABILITY.

10.5 Amendments.

Except where this Amended Agreement specifically provides otherwise, this Amended Agreement may be amended only by a written instrument executed by the Parties with the same formality as this Amended Agreement. Notwithstanding the above, the Parties hereby agree that the Participants, through their respective NCPA Commission representatives, have the discretion to modify the provisions of the following Exhibits pursuant to Section 6.2: A (Participation Percentages and Resource Allocation Percentages), C (Approved Resource Schedules), and G (Form of Power Purchase Agreement). The Parties further agree that the NCPA General Manager has the discretion to modify the provisions of Exhibits B (Form of Resource Schedule) and F (Form of Request for Proposals).

10.6 Severability.

In the event that any of the terms, covenants or conditions of this Amended Agreement or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants or conditions of this Amended Agreement and their application shall not be affected thereby, but shall remain in force and effect unless the court holds that such provisions are not severable from all other provisions of this Amended Agreement.

10.7 Governing Law.

This Amended Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

10.8 Headings.

All indices, titles, subject headings, section titles and similar items are provided for the purpose of convenience and are not intended to be inclusive, definitive, or affect the meaning of the contents of this Amended Agreement or the scope thereof.

10.9 Notices.

Any notice, demand or request required or authorized by this Amended Agreement to be given to any Party shall be in writing, and shall either be personally delivered to the Participant Representative and the secretary of the Commission or transmitted to the Participant and the secretary at the address

shown on the signature pages hereof. The designation of such address may be changed at any time by written notice given to the secretary of the Commission who shall thereupon give written notice of such change to each Participant. Any notices required hereunder shall also be delivered to Participant's Commissioner.

10.10 Warranty of Authority.

Each Participant, and NCPA, represents and warrants that it has been duly authorized by all requisite approval and action to execute and deliver this Amended Agreement and that this Amended Agreement is a binding, legal, and valid agreement enforceable in accordance with its terms as to the Participant and as to NCPA. Upon the execution of this Amended Agreement, each Participant shall deliver to NCPA evidence of such Participant's authority to enter into this Amended Agreement and that such authority was exercised in accordance with such Participant's Constitutive Documents.

10.11 Counterparts.

This Amended Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all the signatories to all of the counterparts had signed the same instrument. Any signature page of this Amended Agreement may be detached from any counterpart of this Amended Agreement without impairing the legal effect of any signatures thereon, and may be attached to another

counterpart of this Amended Agreement identical in form hereto but having attached to it one or more signature pages.

10.12 Assignment.

Except as provided by Section 7, no Participant may assign or otherwise transfer all or any portion of its Participation Percentage or any other rights and obligations under this Amended Agreement without the express written consent of NCPA.

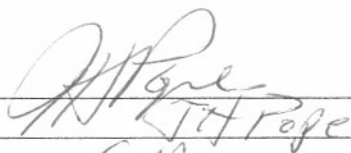
10.13 List of Exhibits. As of the Effective Date of this Amended Agreement, all prior Agreements, including all Exhibits referenced in the December 14, 2006 NGPP Third Phase Agreement, are superseded. The new Exhibits are attached hereto and incorporated herein, and are denoted as follows:

- Exhibit A - Participation Percentages and Resource Acquisition Percentages
- Exhibit B - Form of Resource Schedule
- Exhibit C - Approved Resource Schedules
- Exhibit D - Intentionally Omitted
- Exhibit E - Intentionally Omitted
- Exhibit F - Form of Request for Proposals
- Exhibit G - Form of Power Purchase Agreement

IN WITNESS WHEREOF, each Participant has executed this Amended Agreement with the approval of its governing body, and NCPA has authorized this Amended Agreement in accordance with the authorization of its Commission.


NORTHERN CALIFORNIA POWER AGENCY
180 Cirby Way
Roseville, CA 95678
916-781-3636
916-783-7693 fax

BAY AREA RAPID TRANSIT DISTRICT
PO Box 12688
Oakland, CA 94604-2688
510-464-6435
510-464-6118 fax

By: 
Its: GM

By: _____
Its: _____

Approved as to form:

By: 
Its: Attorney

Approved as to form:

By: _____
Its: Attorney

CITY OF HEALDSBURG
401 Grove Street
Healdsburg, CA 95448
707-431-3317
707-431-3321 fax

By: _____
Its: _____

Approved as to form:

By: _____
Its: Attorney

CITY OF PALO ALTO
PO Box 10250
Palo Alto, CA 94303-0862
650-329-2273
650-321-0651 fax

By: _____
Its: _____

Approved as to form:

By: _____
Its: Attorney

CITY OF LOMPOC
PO Box 8001
Lompoc, CA 93438-8001
805-736-1261
805-736-5347 fax

By: _____
Its: _____

Approved as to form:

By: _____
Its: Attorney

PLUMAS SIERRA REC
73233 State Hwy 70
Portola, CA 96122-7069
530-832-4261
530-832-6070 fax

By: _____
Its: _____

Approved as to form:

By: _____
Its: Attorney

CITY OF SANTA CLARA
1500 Warburton Avenue
Santa Clara, CA 95050
408-615-2250
408-241-6771 fax

By: _____
Its: _____

Approved as to form:

By: _____
Its: Attorney

CITY OF UKIAH
300 Seminary Avenue
Ukiah, CA 95482
707-463-6200
707-463-6204 fax

By: _____
Its: _____

Approved as to form:

By: _____
Its: Attorney

CITY OF LODI
221 West Pine St.
Lodi, CA 95240
209-333-6702
209-333-6807 fax

By: Blair King
Its: City Manager

Approved as to form:

By: D. Stephen Schwabauer
Its: Attorney

Attest:

Randi Johl, City Clerk

#103338v1

Exhibit A
Project Participation Percentages
And
Resource Allocation Percentages

Participant	Participant Election (aMW)*	Participation Percentage
Alameda	-	-
BART	7.0	10.9375%
Biggs	-	-
Gridley	-	-
Healdsburg	2.0	3.1250%
Lassen	-	-
Lodi	5.0	7.8125%
Lompoc	5.0	7.8125%
Palo Alto	15.0	23.4375%
Plumas	2.0	3.1250%
Port of Oakland	-	-
Redding	-	-
Roseville	-	-
SVP	25.0	39.0625%
TID	-	-
Truckee Donner	-	-
Ukiah	3.0	4.6875%
Total Annual aMW	64.0	100.0000%

* aMW = Capacity in Average MW

Exhibit A-1

Resource Allocation Percentage Table

Exhibit B
Form of Resource Schedule

Name :

Location :

Fuel / Technology :

Size :

Type of Procurement :

Estimated Costs :

Key Milestone Dates (such as commercial operation date and delivery period):

Definitive Agreement(s) :

Proposed Budget :

Proposed Mechanism for Financing the Procurement :

Other Notes and Underlying assumptions :

Exhibit C
Approved Resource Schedules

The Resource Schedule submitted in connection with opting out of or approving a Proposed Resource under Section 3 will be added to this Exhibit following approval of such Proposed Resource in accordance with Sections 3.2 and 3.4 respectively.

Exhibit D
Intentionally Omitted

Exhibit E
Intentionally Omitted

Exhibit F
Pro Forma Request for Proposals



REQUEST for PROPOSALS

For

RENEWABLE ELECTRIC POWER SUPPLY PROPOSALS

RFP Issue Date: _____
Response Deadline: _____ 5:00pm Pacific Prevailing Time
(PPT)

Section 1. PURPOSE AND SCOPE

The Northern California Power Agency (NCPA) is accepting proposals for Eligible Renewable Resources and Landfill Gas supplies to meet the expected long-term electric power needs of its Members.

This RFP is limited to those parties who currently have rights in, own, or propose to develop, an Eligible Renewable Resource electric generating facility(ies) or, own and operate landfill facilities.

NCPA may procure power supply resources or landfill gas supplies from those Respondents whose proposals, in NCPA's sole judgment, represent the greatest value to the NCPA Members when compared with other options available to NCPA. The issuance of this Request For Proposals (RFP) does not constitute a commitment by NCPA or its Members to purchase such resources from any source. NCPA reserves the

AMENDED THIRD PHASE AGREEMENT - NCPA GREEN POWER POOL

right to revise, suspend or terminate this RFP and any schedule related thereto at its sole discretion without liability to any Respondent.

Section 2. DESCRIPTION OF NCPA

NCPA is a nonprofit California joint powers agency established in 1968. Its **Members are:** the cities of Alameda, Bay Area Rapid Transit District, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, Ukiah, the Port of Oakland, the Truckee Donner Public Utility District, and the Turlock Irrigation District; and two **Associate Members:** Placer County Water Agency, and the Plumas-Sierra Rural Electric Cooperative. These Members serve nearly 700,000 electric consumers in Central and Northern California. Attachment 5 displays the locations of each NCPA Member and jointly owned resources.

As a CAISO Schedule Coordinator, NCPA makes arrangements for physical power deliveries to its Members through the CAISO Grid. In addition, NCPA's members hold additional transmission-related rights through other pre-existing contracts.

In Fiscal Year 2004-05, NCPA Members met peak demands of 1960 megawatts (MW) and supplied 9400 gigawatt-hours (GWh) of energy. To meet these loads, NCPA Members own and operate geothermal generation located in the Geysers region of California, multiple hydroelectric facilities, gas fired combustion turbines (CTs) located in five Members' service areas, miscellaneous small projects, numerous existing power supply contracts (including renewable sources such as wind and landfill gas purchased via NCPA's 2003 Renewable Electric Power Supply RFP) and Western Area Power Administration (Western) contracts for capacity and associated energy.

Those Members participating in this RFP have the exclusive authority to set retail rates sufficient to cover power purchase obligations, with the exception of BART, which has tariffs, fees or other sources of revenue except as such may be limited by law. Power purchase contracts between NCPA and third parties are not subject to prudence review by state regulatory agencies and may be enforced according to their terms, in accordance with California law. The California Public Utilities Commission lacks jurisdiction over the power purchase contracts of such NCPA Members. Contracts to be executed as a result of this RFP are intended as binding legal agreements enforceable in the California courts.

With the exception of BART, each NCPA Member, participating in this RFP, operates its own electric system as an enterprise and special fund and such members are obligated to establish and collect fees and charges for electricity furnished through its electric system sufficient to pay any and all amounts payable from electric system revenues, which include amounts of capacity or energy, or both, furnished pursuant to an agreement entered into as a result of this RFP. BART shall generate revenues sufficient to cover its obligations under an agreement through tariffs, fees or other sources of revenue except

through such sources which may be limited by law. Fees and charges for electricity furnished through each NCPA Member's electric system are not considered taxes and are thus not subject to California tax and voter approved provisions such as Propositions 13, 62, and 218.

Section 3. DESCRIPTION OF REQUEST

A) Electric Power Supply

NCPA will accept long-term contract or equity position proposals for renewable electric power supply resources which include, but may not be limited to: biomass, biodiesel, fuel cells using renewable fuels, digester gas, geothermal, landfill gas, municipal solid waste, ocean wave, ocean thermal, tidal current, waste tire, waste gasification (various fuels), solar (thermal), solar (photovoltaic), wind, or small hydro(30MW or less) which are (a) located within California, (b) are located outside of California and have their first point of interconnection with the Western Electricity Coordinating Council transmission system located within California or (c) are located outside of California but deliver electricity to a substation or node within California.

Respondents may submit proposals that specify an energy source other than one of those listed above. Any Respondent, who chooses to propose an energy source not on the above list, must provide adequate documentation in its proposal which identifies the fuel source as Eligible Renewable. After verification of the proposal as an Eligible Renewable Resource project, NCPA, in its sole discretion, will make a determination as to the suitability of the proposal for this RFP process.

NCPA will not accept proposals for renewable resources that are separated from their Renewable Energy Credits/Attributes (REC) and offered only as an energy transaction. Additionally, this RFP is limited to generating facilities that have an installed capacity as follows:

- a) PV Solar facilities directly connected to the distribution system of a participating NCPA Member: 10kW or larger,
- b) Other facilities directly connected to the distribution system of a participating NCPA Member: 100kW or larger,
- c) All other facilities: 1MW or larger.

Depending on the value and type of proposals received, NCPA could accept, from one or more proposals, up to a total of 79aMW. [Average MW(aMW) - For example, 100MW of installed wind capacity at 32% annual capacity factor would be equivalent to 32aMW.]

B) Power Purchase Agreement (PPA) for Electric Power Supply

NCPA has prepared a pro-forma PPA (Attachment 4) for the purchase of renewable energy and associated environmental attributes. The PPA and associated Addenda contemplate the transfer of both renewable energy and RECs. Any proposal made for the sale of both renewable energy and associated RECs must be made by the Respondent with the assumption that the pro-forma will be the basis for any definitive agreements between the Respondent and NCPA.

Capitalized terms used in this RFP and not otherwise defined have the meanings given to them in the PPA. Respondents should review the pro-forma PPA to have a full understanding of this RFP.

Any executed agreement for the purchase of Eligible Renewable Resource energy will be presented to the NCPA Commission and will be subject to the approval of the Commission and any other applicable authorities that have jurisdiction over any or all of the subject matter.

NCPA reserves the right to update, modify, or revise any or all of the terms and conditions contained in the pro-forma PPA and associated addenda.

C) Landfill Gas

NCPA will also accept long-term contract proposals for the use of landfill gas supplies to be transferred to NCPA at the point of delivery for use as fuel for the generation of electric power. Such generation will be produced by an NCPA owned, built, and operated electric generation plant.

Section 4. SECURITY

NCPA will not post security, collateral, or other assurances for credit purposes for any reason whatsoever prior to or during the term of any agreement arising from this RFP.

Proposals that include or are contingent on NCPA providing security, collateral, or other assurances will be deemed non-responsive and will not be considered.

Section 5. PROPOSAL SUBMITTAL

All responses, questions and communications shall be submitted to the following email address, _____, using the appropriate Stage 1 Proposal Questionnaire

You may also direct questions to:

Dana W. Griffith
Power Coordination and Planning Engineer
Tel: 916-781-3636
Fax: 916-783-7693

The following table summarizes the attachments to be provided to NCPA by Proposers:

Forms to be filled out by:		Attachment	Description
Electric Generation	Landfill Owners		
X		1a	Electric Generation Proposal
X		1b	Electric Generation Proposal Data Summary
	X	2a	Landfill Gas Proposal
	X	2b	Landfill Gas Proposal Data Summary
X	X	3a	Electric Generation Proposer - Waiver and Acknowledgement
	X	3b	Landfill Gas Proposer - Waiver and Acknowledgement
		4	PPA for Electric Generation
		5	NCPA Member and Project Map

NCPA, in its sole discretion, may reject any late or non-responsive proposal.

NCPA must receive all proposals with the appropriate attachments by electronic e-mail no later than 5:00 p.m. (PPT) on _____.

A hard copy of the proposal is not required; however, Respondents may also send a hard copy of the proposal and/or other supporting documents to NCPA no later than 5:00 p.m. (PPT) _____.

Each proposal package submitted in response to this RFP shall contain only one proposal. Respondents may submit more than one proposal in separate proposal packages.

Proposals, including proposed prices, will remain binding on the Respondent through the date of completion of negotiations and the NCPA Commission approval process (120 days). A duly authorized officer of the Respondent must sign the proposal.

None of the material received by NCPA from the Respondent in response to this RFP will be returned to Respondent. All materials and proposals submitted by the Respondent will become the property of NCPA and may be used by NCPA for the purpose of evaluating proposals, executing any agreements, regulatory hearings, and administering any resulting definitive agreements.

All responses that may arise from this RFP are considered commitments for use in developing the agreement between NCPA and the Respondent.

Any and all proposals in respect of a landfill gas-fired electricity generating facility or landfill gas supply shall include, as the first page of the proposal, an executed Attachment 3a or Attachment 3b, whichever is applicable.

Section 6. EVALUATION PROCESS

The RFP evaluation process will be completed in two stages. The first stage includes the submission of the Stage 1 Proposal Questionnaire (Attachments 1, 2 and 3), an initial screening by NCPA, and a preliminary evaluation by NCPA.

NCPA will perform an initial screening to identify and eliminate any proposal that is non-responsive to the RFP, does not meet the minimum requirements set forth in the RFP, is clearly not economically competitive with other proposals, or is submitted by a Respondent that lacks appropriate creditworthiness, sufficient financial resources, or qualifications to provide dependable and reliable service.

NCPA will then perform a preliminary evaluation of the remaining proposals and rank their value relative to other proposals as well as all other available options.

NCPA expects the initial screening and proposal evaluation process will take approximately six weeks after the date of closing for submission of complete proposals; however, the timeline will depend on the number and complexity of proposals received. After the initial screening and evaluation process, NCPA will notify each Respondent of its status. Respondents will be notified whether their proposal is on the "Short List", "Secondary List", or listed as "Not Considered at this Time".

The Stage 2 process may include presentations to NCPA and the participating NCPA Members, verification of certain key Proposal data, and reviews of other issues as needed. Any Respondent who is notified that its proposal meets the Stage 1 criteria and is advanced to the "Short List" will be advised of the due date for any additional Stage 2 questions.

NCPA may request that Respondents complete supplemental questionnaires and/or meet for oral interviews at any stage of the RFP process. Respondents failing to provide information, deemed necessary by NCPA to adequately review a proposal, may be eliminated from further consideration at any stage or time during the RFP process.

Section 7. EVALUATION CRITERIA

NCPA will, in its sole discretion, evaluate responsive proposals to determine which proposals are likely to provide the greatest overall value to its Member utilities. All proposals will be evaluated based on factors that include, but are not limited to: proposal term, technology, energy source, location, delivery point, status, timeline, joint action partners, environmental benefits as well as Respondent's experience, public credit rating,

financial stability, extent of off-balance sheet financing, product price and terms, delivery, service levels, and other relevant criteria.

In addition, depending on the project being proposed, proximity to load may have value to certain NCPA Members. Those Members may be interested in being a host or assisting in direct connection to their distribution grid.

Evaluations will be based on information provided during the two-stage RFP process, possible oral interviews with the Respondent, mail or email requests, information already known by NCPA, and other publicly available information.

All determinations made by NCPA with respect to any Respondent or its proposal, including the determinations described in this RFP, shall be made by NCPA in its sole discretion and without liability. No debriefings will be provided as these determinations will be final and are not subject to review.

Section 8. GENERAL PROVISIONS

If the Respondent so specifies and clearly identifies portions of its proposal as “PROPRIETARY AND CONFIDENTIAL”, NCPA will make reasonable efforts to treat the marked portions as confidential information. Such information may, however, be made available under applicable State or Federal law. NCPA also reserves the right to release such information to its agents, contractors, or Member utilities for the purpose of evaluating a Respondent’s proposal. Such agents, contractors and Member utilities will be required to observe the same care with respect to disclosure as NCPA. Under no circumstances will NCPA, its Commission, managers, agents, contractors or Member utilities, be liable for any damages resulting from any disclosure of Respondent’s claimed confidential information during or after this RFP process.

Although NCPA is interested in meeting its needs by acquiring resources that provide the greatest value to its Members, evaluation of a proposal does not constitute a commitment by NCPA to purchase energy and/or capacity from any source. NCPA Members and NCPA are not obligated in any way to proceed with this RFP or consider or enter into any agreement or undertake any liability to any Respondent in connection with this RFP and any and all proposals, whether qualified or not, may be rejected without any liability whatsoever to any Respondent on the part of NCPA or any NCPA Member.

NCPA shall not be responsible for any costs incurred by Respondent to prepare, submit, negotiate, contract, or participate in this RFP process.

Those Respondents who submit proposals agree to do so without legal recourse against NCPA, its Commission, managers, agents, contractors or Member utilities for rejection of their proposal(s) or for failure to execute an agreement for any reason. NCPA shall not be liable to any Respondent or party at law or in equity for any reason whatsoever for any acts or omissions arising out of or in connection with this RFP. By submitting its

proposal, each Respondent waives any right to challenge any valuation by NCPA of any proposal of any Respondent or any determination of NCPA to select or reject any proposal of any Respondent or take any action contemplated by this RFP, including any right of a Respondent to intervene in any governing body proceeding for the purpose of protesting the selection or rejection of any proposal, any other decision of NCPA contemplated by this RFP or any resulting agreement related to a selected proposal. Each Respondent, in submitting its proposal, irrevocably agrees and acknowledges that it is making its proposal subject to and in agreement with the terms of this RFP and agrees that NCPA shall be entitled to specific performance of its rights hereunder and injunctive relief.

Exhibit G
Pro Forma Power Purchase Agreement (PPA)

2008 PRO FORMA

RENEWABLE ENERGY POWER PURCHASE AGREEMENT

between

NORTHERN CALIFORNIA POWER AGENCY

and

[SELLER'S NAME]

[DATE]

RENEWABLE ENERGY POWER PURCHASE AGREEMENT

This Renewable Energy Power Purchase Agreement, together with the exhibits, attachments, and any referenced collateral agreement or similar arrangement between the Parties (collectively, the “Agreement”) is made and effective as of the following date: *[Insert Date]* (“Effective Date”) by and between the Northern California Power Agency, a joint powers agency established pursuant to the laws of the State of California (“Buyer” or “NCPA”), and *[Insert Seller’s Name]*, a *[Insert Seller’s business registration and location thereof]* (“Seller”).

WHEREAS, Seller intends to construct, own, and operate a *[Insert resource capacity]* MW *[Insert resource type]*-powered generating facility, which qualifies as of the Effective Date as an eligible renewable energy resource (“ERR”) under the State of California Renewable Portfolio Standard Program (“RPS”), as codified at California Public Utilities Code Section 399.11, *et seq.*³ and desires to sell electricity produced by such generating facility together with all Environmental Attributes and Capacity Attributes, each as defined below, to Buyer pursuant to the terms and conditions set forth herein; and

WHEREAS, Buyer desires to purchase electricity generated by Seller’s generating facility, together with all Environmental Attributes and Capacity Attributes pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises hereof, and the covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer and Seller, intending to be legally bound, hereby agree as follows.

AGREEMENT

ARTICLE 1: DEFINITIONS

Unless otherwise required by the context in which any term appears, (i) initially-capitalized terms used in this Agreement shall have the meanings specified in this Article; (ii) terms defined in the singular shall include the plural and vice versa; (iii) references to “Articles,” “Sections,” and “Exhibits” shall be to articles, sections, or exhibits hereof; (iv) all references to a particular entity shall include a reference to such entity’s successors and permitted assigns; (v) the words “herein,” “hereof,” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection hereof; (vi) all accounting terms not specifically defined herein shall be construed in accordance with GAAP, consistently applied; (vii) references to this Agreement shall include a reference to all appendices and Exhibits hereto, as the same may be amended, modified, supplemented, or replaced from time to time; (viii) terms used in the masculine shall include the feminine and neuter and vice versa; and (ix) the term “including,” when used in this Agreement, shall mean to include without limitation.

- 1.1 “Adjustment Period” means (i) the actual period when inaccurate measurements were made by a defective Meter, if that period can be determined to the mutual satisfaction of the Parties, or (ii) if the actual period cannot be determined to the mutual satisfaction of the Parties, one-half the period from the date of the last previous test of the Meter to the date such failure is discovered.
- 1.2 “Agreement” has the meaning set forth in the preamble of this Agreement.
- 1.3 “Available Hours” means the number of hours during the Peak Months or Non-Peak Months, as applicable, of each Contract Year in which the Generating Facility is capable of delivering Energy to the Delivery Point; provided that, to the extent that the Generating Facility is not capable of delivering all of the Contract Capacity in any hour, the Available Hours with respect to such hour shall be reduced *pro rata* to reflect the fraction of the Contract Capacity that the Generating Facility is capable of delivering in such hour.
- 1.4 “Availability” means the ability of the Generating Facility to produce and of Seller to deliver Output at a level at least equal to the Contract Capacity, assuming adequate [*Insert resource type*] resource. Availability shall be determined as a percentage for the Peak Months and Non-Peak Months of each Contract Year in accordance with the following formula:

$$\text{Availability} = 100 \times \frac{\text{Available Hours}}{\text{Base Hours}}$$

1.5 “Availability Shortfall Damages” means an amount equal to the following formula:

$$\text{Availability Shortfall Damages} = (A) \times (B) \times (C) \times (D)$$

where:

- (A) equals the positive difference between the required Availability in any period and the actual Availability in such period, expressed as a decimal;
 - (B) equals the prevailing Contract Price;
 - (C) equals the quotient of the number of months in the relevant period divided by twelve (12); and
 - (D) equals the Expected Annual Contract Quantity.
- 1.6 “Base Hours” means the number of hours during the Peak Months or Non-Peak Months, as applicable, of each Contract Year; provided that, to the extent that the Generating Facility is partially or wholly incapable or otherwise unable to deliver Energy in any hour as a result of a Force Majeure Event that hour (or if the Generating Facility’s capacity is only partially constrained, the *pro rata* portion of that hour) shall be excluded from the Base Hours.
- 1.7 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall begin at 8:00 a.m. and end at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent, or by whom the notice, payment or delivery is received, as the context requires.
- 1.8 “Buyer” has the meaning set forth in the preamble of this Agreement.
- 1.9 “Buyout Payment” means the amount set forth in Exhibit 1 [Buyout Payment Form].
- 1.10 “Capacity Attributes” means any and all current or future defined characteristics, certificates, tags, credits, ancillary service attributes, or accounting constructs, howsoever entitled, including Resource Adequacy Benefits, and any tracking or accounting associated with the foregoing, attributed to or associated with the electricity generating capacity of the Generating Facility, or any unit of electricity generating capacity of the Generating Facility, during the Term.
- 1.11 “Commercial Operation” means that: (i) the Generating Facility has been constructed in accordance with Good Utility Practice, all Permits, Requirements of Law, and the specifications set forth in Exhibit 2 [Description of Generating Facility]; (ii) all of the requirements set forth in Article 7 have been satisfied; and (iii) Seller has successfully completed the Commercial Operation Performance Tests.
- 1.12 “Commercial Operation Date” means the date on which Commercial Operation first occurs.

- 1.13 “Commercial Operation Performance Tests” means the tests set forth in Exhibit 3 [Commercial Operation Performance Tests].
- 1.14 “Confidential Information” means information in respect of the business of either Party provided by one Party to the other in accordance with, or in furtherance of, this Agreement including this Agreement, the content of documents, ideas, business methods, finances, prices, business plans, financial development plans, manpower plans, customer lists or details, computer systems, software, know-how, trade secrets or other matters connected with such Party’s obligations hereunder; provided, however, that “Confidential Information” shall not include information that (i) at the time of disclosure or thereafter is generally available to, or known by, the public other than as a result of a disclosure by the receiving Party or its representatives; (ii) was available to the receiving Party on a non-confidential basis from a source other than the disclosing Party; or (iii) was otherwise independently acquired or developed by the receiving Party without violating its obligations hereunder.
- 1.15 “Contract Capacity” means the installed electricity generating capacity of the Generating Facility, net of all on-site and other uses permitted under this Agreement and of all line or transformation losses to the Delivery Point, which shall be *[Insert Capacity]* MW.
- 1.16 “Contract Price” means the price in \$U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Output, as specified in Exhibit 4 [Contract Price].
- 1.17 “Contractual Obligations” means, as to Seller, any material agreement, instrument or undertaking to which Seller is a party or by which it or any of its property is bound.
- 1.18 “Contract Year” means each year beginning on January 1st and ending on December 31st of such year following the Commercial Operation Date; provided, however, that the first Contract Year shall commence on the Commercial Operation Date and end on the following December 31st, and the last Contract Year shall end on the relevant anniversary of the Commercial Operation Date as set forth in Section 2.1.
- 1.19 “Control Area” means the electric power system (or combination of electric power systems) under the operational control of the ISO or any other electric power system under the operational control of another organization vested with authority comparable to that of the ISO.
- 1.20 “Credit Support Amount” means the amount determined in accordance with Exhibit 5 [Credit Support Amount].
- 1.21 “Damages” has the meaning set forth in Section 9.4.
- 1.22 “Delay Liquidated Damages” means an amount equal to \$ *[Insert Price]* per day.
- 1.23 “Delivery Point” means the point at which the Output will be delivered by Seller and received by Buyer hereunder, as specified in Exhibit 2 [Description of Generating Facility].

- 1.24** “EA Agency” means any local, state or federal entity, or any other Person, that has responsibility for or jurisdiction over a program involving transferability of Environmental Attributes, including the Clean Air Markets Division of the United States Environmental Protection Agency, the California Resources, Conservation and Development Commission, the California Public Utilities Commission, and any successor agency thereto.
- 1.25** “Effective Date” has the meaning set forth in the preamble of this Agreement.
- 1.26** “Emergency” means any condition or situation which poses an imminent threat to: (i) life or property, or (ii) Buyer's, or any of its member's, ability to maintain safe, adequate, and continuous electric power and energy service to its customers.
- 1.27** “Energy” means the electricity generated by the Generating Facility pursuant to this Agreement, as expressed in units of kWh or MWh.
- 1.28** “Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Generating Facility or Expansion Plant(s), as the case may be, and its displacement of conventional energy generation. Environmental Attributes include: (i) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (ii) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (iii) the reporting rights to these avoided emissions such as Green Tag Reporting Rights.

“Green Tag Reporting Rights” are the right of a Green Tag purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag purchaser's discretion, and include those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. “Green Tags” are accumulated on MWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy.

Environmental Attributes do not include: (i) any energy, capacity, reliability or other power attributes from the Generating Facility or Expansion Plant(s), (ii) Production Tax Credits associated with the construction or operation of the Generating Facility, or Expansion Plant(s), and other financial incentives in the form of credits, reductions, or allowances associated with the Generating Facility or Expansion Plant(s) that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by Seller or the owners of the Site for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits, or (iv) emission reduction

credits encumbered or used by the Generating Facility or Expansion Plant(s) for compliance with local, state, or federal operating and/or air quality permits.

- 1.29 “Environmental Attributes Reporting Rights” means all rights to report ownership of the Environmental Attributes to any Person, including under Section 1605(b) of the Energy Policy Act of 1992.
- 1.30 “ERR” has the meaning set forth in the recitals of this Agreement.
- 1.31 “Event of Default” has the meaning set forth in Article 9.
- 1.32 “Expansion Plant” means any expansion of the Generating Facility from its Contract Capacity. Each such expansion of the Generating Facility shall be deemed to be an Expansion Plant.
- 1.33 “Expansion Plant Output” means all capacity and associated Energy, Test Energy, and associated Environmental Attributes and Capacity Attributes produced by Seller at any Expansion Plant.
- 1.34 “Expected Annual Contract Quantity” means the amount of Energy and Environmental Attributes that Seller expects to deliver to Buyer hereunder in a given Contract Year other than the first and last Contract Years (which may be partial years), as set forth in Exhibit 6 [Expected Annual Contract Quantity Form].
- 1.35 “Expected Commercial Operation Date” means the date on which the Commercial Operation Date is expected to occur, as specified in Exhibit 7 [Milestones].
- 1.36 “FERC” means the Federal Energy Regulatory Commission and its successor organization, if any.
- 1.37 “Force Majeure Event” has the meaning set forth in Section 8.1.
- 1.38 “GAAP” means Generally Accepted Accounting Principles in the United States of America that are consistently applied.
- 1.39 “Generating Facility” means Seller’s electricity generating facility as more particularly described in Exhibit 2 [Description of Generating Facility], together with all materials, equipment systems, structures, features and improvements necessary to produce electricity at such facility, excluding the Site, land rights and interests in land.
- 1.40 “Governmental Authority” means any federal or state government, or political subdivision thereof, including, any municipality, township or county, or any entity or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, any corporation or other entity owned or controlled by any of the foregoing.
- 1.41 “Guarantor” means a Person that guarantees the obligations of Seller by executing a Guaranty.

- 1.42 “Guaranty” means a guaranty in the form attached hereto as Exhibit 8 [Guaranty Agreement].
- 1.43 “Interconnection” means the interconnection of the Generating Facility with the Transmission System, including construction, installation, operation and maintenance of all Interconnection Facilities.
- 1.44 “Interconnection Agreement” means the agreement between Seller and the Transmission Provider pursuant to which Seller and the Transmission Provider set forth the terms and conditions for Interconnection of the Generating Facility to the Transmission System, as amended from time to time.
- 1.45 “Interconnection Facilities” means all of the facilities installed for the purpose of interconnecting the Generating Facility to the Transmission System, including transformers and associated equipment, relay and switching equipment and safety equipment.
- 1.46 “Interest Rate” means, for any date, the lesser of: (i) the per annum rate of interest equal to the prime lending rate as may from time to time be published in the *Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published); and (ii) the maximum rate permitted by applicable law.
- 1.47 “Intermittent Resources” means Generating Facilities that use wind or solar energy, or tidal or wave action, to generate electricity, or any other resource agreed upon by Seller and Buyer.
- 1.48 “Investment Tax Credits” or “ITC” means investment tax credits under Section 48 of the Internal Revenue Code, as amended from time-to-time during the Term.
- 1.49 “ISO” means the California Independent System Operator Corporation, or its functional successor.
- 1.50 “ISO Tariff” means the duly authorized tariff, rules, protocols and other requirements of the ISO, as amended from time to time.
- 1.51 “kWh” means a kiloWatt-hour of electric energy.
- 1.52 “Lender(s)” means any Person(s) providing money or extending credit (including any capital lease) to Seller for: (i) the construction of the Generating Facility; or (ii) the term or permanent financing of the Generating Facility.
- 1.53 “Letter(s) of Credit” means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank, or the U.S. branch of a foreign bank, with such bank having a credit rating of at least A- from S&P or A3 from Moody’s, in the form attached hereto as Exhibit 9 [Letter of Credit].

- 1.54 “Meters” means the physical metering devices, data processing equipment and apparatus associated with the meters owned by Seller or Transmission Provider or its designee, and used to determine the quantities of Energy generated by the Generating Facility and to record other related parameters required for the reporting of data to Seller in accordance with the requirements of Article 4.
- 1.55 “Meter Service Agreement for ISO Metered Entities” has the meaning set forth in the ISO Tariff.
- 1.56 “Milestones” means the events that are set forth in Exhibit 7 [Milestones].
- 1.57 “Moody’s” means Moody’s Investor Services, Inc. or its successor.
- 1.58 “MW” means a megaWatt of electric energy.
- 1.59 “MWh” means a megaWatt-hour of electric energy.
- 1.60 “Non-Peak Months” means, collectively, the months of October, November, December, January, February, March, April and May during each Contract Year.
- 1.61 “Outage” means a physical state in which all or a portion of the Generating Facility is unavailable to provide Energy to the Delivery Point, including any duration or reduction in the capacity of the Generating Facility, whether planned or unplanned.
- 1.62 “Output” means (i) the Contract Capacity and associated Energy, (ii) Test Energy, and (iii) all Environmental Attributes and Capacity Attributes.
- 1.63 “Participating Generator Agreement” has the meaning set forth in the ISO tariff.
- 1.64 “Parties” means Buyer and Seller, and their respective successors and permitted assignees.
- 1.65 “Party” means Buyer or Seller, and each such Party’s respective successors and permitted assignees.
- 1.66 “Peak Months” means, collectively, the months of June, July, August and September during each Contract Year.
- 1.67 “Permits” means, collectively, all federal, state or local authorizations, certificates, permits, licenses and approvals required by any Governmental Authority for the construction, ownership, operation and maintenance of the Generating Facility.
- 1.68 “Person” means an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity.
- 1.69 “Production Tax Credits” or “PTC” means production tax credits under Section 45 of the Internal Revenue Code, as amended from time-to-time during the Term.

- 1.70** “Prudent Utility Practice” means those practices, methods and equipment, as changed from time to time, that: (i) when engaged in, or employed, are commonly used in the State of California in prudent electrical engineering and operations to operate electricity equipment lawfully and with safety, reliability, efficiency and expedition; or (ii) in the exercise of reasonable judgment considering the facts known, when engaged in could have been expected to achieve the desired result consistent with applicable law, safety, reliability, efficiency and expedition.

Prudent Utility Practices are not limited to an optimum practice, method, selection of equipment or act, but rather are a range of acceptable practices, methods, selections of equipment or acts.

- 1.71** “Replacement Price” means either (a) the price at which Buyer, acting in a commercially reasonable manner, purchased or purchases a replacement for any Output required to be, but not, delivered by Seller hereunder, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Output, and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point; or at Buyer’s option, (b) the market price at the Delivery Point for such Output not delivered as determined by Buyer in a commercially reasonable manner; provided, however, Buyer shall not be required to purchase any replacement for Output not delivered to determine the Replacement Price under (b) above, or to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability. For the purposes of this definition, Buyer may purchase or value Energy, Environmental Attributes and Capacity Attributes, together or separately, and if separately, the Replacement Price shall be the sum of the relevant costs and values.
- 1.72** “Resource Adequacy Benefits” means the rights and privileges attached to any generating resource that satisfy any entity’s resource adequacy obligations.
- 1.73** “Required Credit Rating” means a rating on a Party’s unsecured, senior long-term debt obligations, unenhanced by any insurance or other mechanism, of not less than “BBB-” by S&P or “Baa3” by Moody’s.
- 1.74** “Requirements of Law” means, collectively, any federal or state law, treaty, franchise, rule, regulation, order, writ, judgment, injunction, decree, award or determination of any arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon Seller or Buyer or any of their property or to which Seller or Buyer or any of their respective properties are subject.
- 1.75** “RPS” or “Renewable Portfolio Standard Program” has the meaning set forth in the recitals of this Agreement.
- 1.76** “Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity of Energy to be delivered on any given day or days hereunder during the Term at the Delivery Point.

- 1.77 “Scheduling Coordinator” means an entity certified by the ISO for the purposes of undertaking the responsibilities specified by ISO Tariff Section 2.2.6, as amended from time-to-time.
- 1.78 “Seller” has the meaning set forth in the preamble of this Agreement.
- 1.79 “Site” means the real property on which the Generating Facility is to be built and located, as more particularly described in Exhibit 2 [Description of Generating Facility].
- 1.80 “Site Control” means the point at which Seller satisfies one or more of the following conditions: (i) Seller is (a) the lessee under a lease, or (b) the grantee under an exclusive easement, in each case with the owner of the Site that allows Seller to construct and operate the Generating Facility at the Site during the Term in accordance with this Agreement; (ii) Seller has a fee ownership of the Site; or (iii) any other form of site control acceptable to Buyer in its reasonable discretion.
- 1.81 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.
- 1.82 “Taxes” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property (including assessments, fees or other charges based on the use or ownership of real property), personal property, transactional, sales, use, transfer, registration, value added, alternative or add on minimum, estimated tax, or other tax of any kind whatsoever, or any liability for unclaimed property or escheatment under common law principles, including any interest, penalty or addition thereto, whether disputed or not, including any item for which liability arises as a transferee or successor-in-interest.
- 1.83 “Term” has the meaning set forth in Section 2.1.
- 1.84 “Test Energy” means Energy generated by the Generating Facility prior to the Commercial Operation Date.
- 1.85 “Test Energy Price” means the price that is eighty percent (80%) of the Contract Price.
- 1.86 “Transmission Provider” means any entity or entities responsible for the interconnection of the Generating Facility with a Control Area or transmitting Energy on behalf of Seller from the Generating Facility to the Delivery Point, and on behalf of Buyer from the Delivery Point.
- 1.87 “Transmission System” means the facilities used for the transmission of electricity in interstate commerce, including any modifications or upgrades made to such facilities, owned or operated by the Transmission Provider.

ARTICLE 2: TERM; TERMINATION AND SURVIVAL OF OBLIGATIONS

2.1 Effective Date and Term

This Agreement shall become effective on the Effective Date and, unless earlier terminated pursuant to an express provision of this Agreement, shall continue until the day before the [*Insert Term*] anniversary of the Commercial Operation Date (“Term”).

2.2 Buyer Termination Option

(a) Generally. Buyer may, in its sole and unlimited discretion, terminate this Agreement at any time after two (2) years from the Commercial Operation Date, upon thirty (30) days advance written notice to Seller, without liability of any kind (other than for previously accrued obligations) provided that within this thirty (30) day period Buyer pays to Seller the Buyout Payment. Termination under this Section 2.2 shall not be implied from any Event of Default or other act or omission of Buyer other than by express written notice by Buyer invoking this Section 2.2.

(b) Buyout Payment. The Buyout Payment shall be determined pursuant to Exhibit 1 [Buyout Payment]. Buyer shall remit the Buyout Payment to Seller in equal monthly installments over the lesser of (i) five (5) years, or (ii) the remaining Term of this Agreement. The Buyout Payment shall not be considered as a measure of damages or for any purpose other than in connection with this Section 2.2.

(c) Disputes. Any disputes regarding the provisions of this Section 2.2 or Exhibit 1 [Buyout Payment] shall be resolved in accordance with Section 11.2(d) of this Agreement. Notwithstanding any such dispute, this Agreement shall terminate upon the effective date of the notice to Seller pursuant to Section 2.2(a).

2.3 Effect of Termination - Survival of Obligations

(a) Generally. Except as set forth in section 2.3(b) or as otherwise expressly set forth herein, upon expiration or termination of this Agreement, neither Party shall have future or further rights or obligations under this Agreement.

(b) Survival of Obligations. The following rights, obligations or provisions shall survive termination or expiration of this Agreement:

- (i) obligations by one Party to the other for payment of any amounts, or for performance of any duties, that have accrued or arose prior to, or have directly resulted from, the expiration or termination of this Agreement;
- (ii) indemnity obligations contained in Section 9.4, which shall survive to the full extent of the statute of limitations period applicable to any third party claim;
- (iii) limitation of liability provisions contained in Section 11.18;

- (iv) for a period of one (1) year after the expiration or termination date, the right to dispute an invoice pursuant to Section 5.1(b); or
- (v) the Confidentiality obligations under Section 11.5.

ARTICLE 3: PURCHASE AND SALE

3.1 Purchase and Sale of Output

(a) Generally. In accordance with the terms and conditions hereof, commencing on the Commercial Operation Date and continuing throughout the Term, Seller shall sell and deliver at the Delivery Point, and Buyer shall purchase and accept from Seller at the Delivery Point, and pay the Contract Price for, all of the Output. Seller shall only Schedule and deliver Energy and Environmental Attributes and Capacity Attributes from the Generating Facility.

(b) Test Energy. Prior to the Commercial Operation Date, Seller shall sell and deliver at the Delivery Point, and Buyer shall purchase and accept from Seller at the Delivery Point, and pay the Test Energy Price for the Test Energy. All Test Energy shall be Scheduled in accordance with Section 3.1(c) and Exhibit 10 [Operations Forecasts and Scheduling Protocols].

(c) Scheduled and Delivered Amounts.¹ Seller shall use good faith efforts to ensure that the amounts Scheduled hereunder match the amounts generated by the Generating Facility. Notwithstanding anything herein to the contrary, the Parties acknowledge that, because of the scheduling requirements of the ISO, Scheduled deliveries and metered generation may be unequal during any period. Buyer shall make monthly payments based upon the amount Scheduled through the ISO, and shall reconcile differences between metered generation and the Energy Scheduled by Seller's Scheduling Coordinator in the next monthly period after actual meter data is available and confirmed by the ISO as follows:

- (i) If the metered generation is more than the amount of Energy Scheduled through the ISO then the following reconciliation shall apply:
 - 1. If the actual imbalance energy price received by Seller (or its Scheduling Coordinator) from the ISO is less than the Contract Price, Buyer shall pay to Seller (in addition to amounts paid for Scheduled Energy) the amount equal to (A) eighty percent (80%) of the difference between (i) the Contract Price for such excess Energy amounts, and (ii) the greater of zero dollars (\$0.0) per MWh or the actual imbalance energy price received by Seller (or its Scheduling Coordinator) from the ISO in respect of such excess Energy, multiplied by (B) the amount of the excess Energy generated.

¹ [NOTE: This section shall not apply to projects less than 1 MW.]

2. If the actual imbalance energy price received by Seller (or its Scheduling Coordinator) from the ISO is greater than the Contract Price, Seller shall pay to Buyer an amount equal to (A) the difference between (i) the actual imbalance energy price received by Seller (or its Scheduling Coordinator) from the ISO, and (ii) the Contract Price for the excess Energy not Scheduled to Buyer, multiplied by (B) the amount of such excess Energy.
 3. In either case, all Environmental Attributes and any Capacity Attributes associated with such excess Energy shall be transferred to Buyer at no additional cost to Buyer.
- (ii) If the metered generation is less than the amount of Energy Scheduled through the ISO then the following reconciliation shall apply:
1. If the price paid by Seller (or its Scheduling Coordinator) to the ISO is less than the Contract Price, Seller shall retain all payments for the Scheduled amounts, but shall return to Buyer the amount equal to (A) the difference between (i) the Contract Price for such generation, and (ii) the actual imbalance energy price paid by Seller (or its Scheduling Coordinator) to the ISO for such excess Scheduled generation, multiplied by (B) the amount of such excess Scheduled generation.
 2. If the price paid by Seller (or its Scheduling Coordinator) to the ISO is greater than the Contract Price, Buyer shall pay to Seller (in addition to amounts paid for Scheduled Energy) the amount equal to (A) eighty percent (80%) of the difference between (i) the lower of (a) two times the Contract Price or (b) the price paid by Seller (or its Scheduling Coordinator) to the ISO and (ii) the Contract Price, multiplied by (B) the amount of such excess Scheduled generation.
- (iii) Notwithstanding the foregoing, if, beginning with the fourth month following the Commercial Operation Date and for each month thereafter, the average over the month of each hourly difference between the Scheduled amount and the generated amount, expressed as a percentage of the relevant hour's Scheduled amount, is greater than plus or minus ten percent (10%), then, with respect to such month:
1. the percentages set forth in Sections 3.1(c)(i)(1)(A) and 3.1(c)(ii)(2)(A) shall be reduced to fifty percent (50%), and
 2. the zero dollars per (\$0.0) per MWh value in Section 3.1(c)(i)(1)(A) shall be increased to the amount equal to the Contract Price multiplied by 0.5, and
 3. the two times the Contract Price value in Section 3.1(c)(ii)(2)(A)(i)(a) shall be reduced to 1.5 times the Contract Price.
- (iv) Except as set forth in this Section 3.1(c), in the event that the amount of Output generated by the Generating Facility deviates from the Scheduled

amounts in any time interval, Seller shall bear any costs (and hold Buyer harmless therefrom) and retain any revenues associated with the deviation.

(d) Intermittent Resources. If, and for so long as, the Seller is participating in the Participating Intermittent Resource Program ("PIRP") established under ISO Tariff Amendment 42, and Seller's Schedules are established under such program, Buyer shall pay to Seller the Scheduled amounts, and there shall be no reconciliation pursuant to Section 3.1(c)(i),(ii), and (iii). However, if at any time during the Term, Seller is no longer participating in PIRP, or its Schedules are not established under PIRP, Section 3.1(c) shall apply.

3.2 Delivery Point

(a) Allocation of Costs and Risks. Seller shall be responsible for any costs or charges imposed on or associated with the Output or the delivery of the Output hereunder up to and at the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Output, or its receipt, after the Delivery Point.

(b) Title and Risk of Loss. Title to, and risk of loss related to, the Output shall transfer from Seller to Buyer after the Delivery Point.

3.3 Environmental Attributes and Capacity Attributes

(a) Generally. Throughout the Term, Seller shall transfer to Buyer, and Buyer shall receive from Seller, all rights, titles and interest in and to the Environmental Attributes and Capacity Attributes, if any, whether now existing or subsequently generated or acquired (other than by direct purchase from a third party) by Seller, or that hereafter come into existence, during the Term, as a component of the Output purchased by Buyer from Seller hereunder. Seller agrees to transfer and make such Environmental Attributes and Capacity Attributes available to Buyer immediately to the fullest extent allowed by applicable law upon Seller's production or acquisition of the Environmental Attributes and Capacity Attributes. Seller agrees that the Contract Price and the Test Energy Price, as applicable are the full compensation for all Energy, Environmental Attributes, and Capacity Attributes.

(b) No Assignment. Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of any portion of the Environmental Attributes and Capacity Attributes to any Person other than Buyer.

(c) RPS Compliance. Before delivery of any Test Energy hereunder, Seller shall cause: (i) the Generating Facility to be certified by the appropriate entity having jurisdiction as an ERR for purposes of the RPS legislation; and (ii) all Output delivered to Buyer from the Generating Facility to qualify as output of an ERR for purposes of the RPS legislation. Seller shall ensure that the Generating Facility maintains ERR status throughout the Term of this Agreement. Seller shall cooperate reasonably with Buyer and provide such certifications or attestations to Buyer as are reasonably necessary to verify that all Environmental Attributes attributable to the Energy have been transferred to Buyer.

(d) Reporting Rights. During the Term, Seller shall not report to any Person that the Environmental Attributes and Capacity Attributes granted hereunder to Buyer belong to anyone other than Buyer, and Buyer may report under any program that such attributes purchased hereunder belong to it.

(e) Attestation. Seller shall document the production of Environmental Attributes under this Agreement by delivering with each invoice to Buyer an attestation for Environmental Attributes produced by the Generating Facility and purchased by Buyer in the preceding calendar month. On or before March 31st of each year following a Contract Year, Seller shall document the transfer of Environmental Attributes to Buyer under this Agreement by delivering to Buyer an attestation for Environmental Attributes transferred under this Agreement in the preceding Contract Year. The form of attestation is set forth as Exhibit 11 [Form of Attestation]. Exhibit 11 [Form of Attestation] shall be updated or changed by the Parties as necessary to ensure that Buyer receives full and complete title to, and the ability to record with any EA Agency as its own, all of the Environmental Attributes purchased hereunder.

(f) Documentation. At Buyer's request, the Parties, each at their own expense, shall execute all such documents and instruments in order to effect the transfer of the Environmental Attributes specified in this Agreement to Buyer or its designees, as Buyer may reasonably request. Upon notification by an EA Agency that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be recorded. Each Party shall promptly give the other Party copies of all documents it submits to the EA Agency to effectuate any transfers.

3.4 Tax Credits

Buyer agrees and acknowledges that all PTCs and ITCs in effect on the Effective Date shall be owned by Seller and/or the owners of the Site. In the event that new tax credits or increased levels of existing tax credits, or other financial incentives applicable to the Generating Facility or the Output are enacted or implemented after the Effective Date and during the Term of the Agreement, Seller agrees to share with Buyer fifty percent (50%) of the value of such tax credits and/or financial incentives realized by Seller or its affiliates in respect of the Generating Facility or the Output.

3.5 Right of First Refusal for Expansion Plant and Expansion Plant Output

(a) Buyer's Right to Purchase. Seller may in its sole discretion determine, from time to time, during the Term to develop, finance, construct and/or operate an Expansion Plant. Each time such a determination is made, Seller shall notify Buyer of such determination and shall offer in writing to sell the Expansion Plant Output to Buyer. The offer shall include the price to be paid by Buyer for the Expansion Plant Output, and the term of the proposed power purchase agreement ("PPA"). The PPA shall otherwise conform to the terms and conditions of this Agreement. If Buyer wishes to accept such offer to purchase all (or a portion) of the Expansion Plant Output, Buyer shall so notify Seller within ninety (90) days of its receipt of such offer. The Parties shall promptly thereafter enter into a

definitive PPA incorporating the terms of such offer. Until such an Expansion Plant PPA is executed, Seller's proposal accepted by Buyer (including any modifications agreed upon in writing by both Parties), shall control all dealings between the Parties relating to the Expansion Plant.

(b) Seller's Right to Sell to Third Parties. If Buyer does not accept Seller's offer to purchase all of the Expansion Plant Output within ninety (90) days of receipt of Seller's offer, Seller shall be free to offer to sell that portion of the Expansion Plant Output not accepted by Buyer to one or more third parties at a price and on other terms and conditions which, taken as a whole, are at least as favorable to Seller as the price and other terms and conditions set forth in Seller's offer to Buyer. If Buyer does not purchase the Expansion Plant Output and Seller sells such Expansion Plant Output to a third party, it shall promptly certify in writing to Buyer that the terms and conditions of sale of such Expansion Plant Output to such third party, taken as a whole, are at least as favorable to Seller as the price and other terms and conditions set forth in Seller's offer to Buyer, and Seller shall provide the relevant contract and any other supporting documentation for such certification. Upon the sale of such Expansion Plant Output in compliance with this Agreement, Buyer shall have no further rights to be offered or to purchase such Expansion Plant Output. Buyer's refusal of Expansion Plant Output from one Expansion Plant shall not affect Buyer's right to purchase the Expansion Plant Output from a later Expansion Plant under the terms of this Agreement. Seller shall not sell nor provide Buyer's Expansion Plant Output to any third party unless it can do so without compromising in any material way its ability to provide the Output to Buyer hereunder. The materiality of any such impact shall be determined by Buyer in its reasonable discretion.

3.6 Option to Install Emission Controls

Buyer may at its option, exercised from time to time, install emission controls on the Generating Facility in connection with the Contract Capacity beyond those then required to meet the Requirements of Law applicable to Seller or the Generating Facility, provided that:

- (i) Buyer shall (a) bear all costs and financial, regulatory and operational risks thereof, including the capital cost thereof and any increase in operation or maintenance expenses, (b) keep Seller whole in all respects, including for decreases in Output and other adverse effects on the Contract Capacity and its performance, increases in operations and maintenance costs and failures of such emission controls to operate; and (c) retain any and all benefits resulting from the emission controls installed by Buyer, including environmental offsets, additional energy production, operation and maintenance cost savings, and tax credits; and
- (ii) Buyer shall not make any such changes to the Contract Capacity without the approval of Seller to the design and plan for implementation of such changes, such approval not to be unreasonably withheld.

ARTICLE 4: METERING

4.1 Metering Requirements

(a) Meters. The transfer of Energy from Seller to Buyer shall be measured by revenue quality Meters at the Delivery Point. Such Meters shall be selected, provided, installed, owned, maintained and operated, at Seller's sole cost and expense, by Seller or its designee in accordance with the ISO Tariff. Seller shall exercise reasonable care in the maintenance and operation of the Meters, and shall test and verify the accuracy of each Meter at least annually. Seller shall inform Buyer in advance of the time and date of these tests, and shall permit Buyer to be present at such tests and to receive the results of such tests.

(b) SCADA. Seller shall install and maintain all equipment and data circuits necessary to determine and transmit real time supervisory control and data acquisition ("SCADA") system data and real time data from the Meter to the ISO. Seller shall provide to Buyer a copy of each certificate of compliance issued by ISO, if any.

(c) Access by Buyer. Buyer shall be provided access to all monitored SCADA points to be used at its discretion in real time monitoring. Buyer may further, at its sole cost and expense, install any updates or upgrades to the Meters, as well as install and maintain check meters and all associated measuring equipment necessary to permit an accurate determination of the quantities of Energy delivered under this Agreement, provided that such equipment does not interfere with Seller's Meters. Seller shall permit Buyer or Buyer's representative access to its Generating Facility for the purpose of installing and maintaining such check meters.

(d) ISO Requirements. Seller shall submit to the ISO, or allow the ISO to retrieve, any meter data required by the ISO related to the Generating Facility and its Output in accordance with the ISO's settlement and billing protocol and meter data tariffs.

4.2 Meter Inaccuracies and Retroactive Adjustments

If a Meter fails to register, or if the measurement made by a Meter is found upon testing to be inaccurate by an amount exceeding plus or minus one percent (1%), an adjustment shall be made correcting all measurements made by the inaccurate or defective Meter during the Adjustment Period. If the Parties are unable to agree on the amount of the adjustment to be applied to the Adjustment Period, the amount of the adjustment shall be determined: (i) by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation, or (ii) if not so ascertainable, by estimating on the basis of the deliveries under similar conditions during periods when the Meter was registering accurately. Upon the determination of the amount of any adjustment and upon acceptance of such adjustment by the ISO, if applicable, Buyer shall pay to Seller any additional amounts then due for deliveries of Output during the Adjustment Period at such time as other payments are due for the billing period in which the determination is made, or Buyer shall be entitled to a credit against the next subsequent payments due for the deliveries of Output, whichever case is applicable.

4.3 Records and Audits

Seller and Buyer shall each keep complete and accurate records and all other data required by each Party for the purposes of proper administration of this Agreement, including such records as may be required by state or federal regulatory authorities. To facilitate payment and verification, Seller and Buyer shall keep all books and records necessary for billing and payments and grant the other Party reasonable access to those records. Seller and Buyer, at their own expense, shall have the right to audit and to examine the billing and operating records and data kept by the other Party relating to the transactions under, and the administration of, this Agreement at any time during normal business hours throughout the Term of this Agreement and for two years thereafter. All such records and data shall be maintained by each Party throughout the Term of this Agreement and for a period of not less than two (2) years following the termination hereof. All such audits and examinations shall be conducted upon reasonable notice and during normal business hours.

ARTICLE 5: BILLING AND PAYMENT

5.1 Billing

(a) Generally. Seller shall read the Meters at the end of each calendar month of the Term, and provide to Buyer on or before the tenth (10th) day of the following month: (i) an invoice based upon the Meter data for Energy delivered in such previous calendar month; and (ii) the corresponding attestation pursuant to Exhibit 11 [Form of Attestation]. Such invoice shall be delivered as specified under Section 11.1.

(b) Disputes over Invoice. Should either Seller or Buyer determine at a later date, but in no event later than one (1) year after the original invoice date, that the invoice amount was incorrect, that Party shall promptly notify the other Party of the error. In the event that an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within thirty (30) Business Days of such resolution along with interest accrued at the Interest Rate from, and including, the due date to, but excluding the date paid. Inadvertent overpayments by Buyer shall be returned upon request or deducted by Seller from subsequent payments, with interest accrued at the Interest Rate from, and including, the date of such overpayment to, but excluding the date repaid or deducted by, Seller. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 5.1(b) within one (1) year after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within one (1) year after the close of the month during which performance occurred, the right to payment for such performance is waived. Failure of Buyer or its agent to withhold any payment amount is not a waiver of Buyer's right to challenge such amount.

5.2 Payment

(a) Generally. Subject to Section 5.1(b), all invoices under this Agreement shall be due and payable on or before thirty (30) days after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party shall make payments by electronic funds transfer as set forth in Exhibit 12 [Payment/Wire Instructions], or by other mutually agreeable method(s), to the account designated by the other Party.

(b) Late Payments and Interest Rate. Payments made after the due date shall be considered late and shall bear interest on the unpaid balance at an annual rate equal to two percent (2%) plus the Interest Rate. Interest shall be computed on the basis of a 365-day year.

5.3 Netting of Payments

The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other for the purchase and sale of Output during the monthly billing period under this Agreement, including any related damages, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

5.4 Allocation of Taxes

Seller shall pay or cause to be paid all Taxes on or with respect to the Output sold and delivered hereunder arising at, or prior to, the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the Output purchased and received from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Output and are, therefore, the responsibility of Seller). In the event Seller is required by law or regulation to remit or pay Taxes which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Taxes. If Buyer is required by law or regulation to remit or pay Taxes which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Taxes from the sums due to Seller under this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Taxes for which it is exempt under the law. In the event that such Party does not prepare audited financial statements, such Party shall provide financial statements prepared in accordance with GAAP demonstrating its financial condition in form and substance reasonably acceptable to the other Party.

ARTICLE 6: CREDIT REQUIREMENTS

6.1 Financial Information

If requested by one Party, the other Party shall deliver: (i) within one hundred and twenty (120) days following the end of each fiscal year, a copy of the other Party's annual report containing audited consolidated financial statements for such fiscal year, and (ii) within sixty (60) days after the end of each of its first three (3) fiscal quarters of

each fiscal year, a copy of the other Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with GAAP; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the other Party diligently pursues the preparation, certification and delivery of the statements.

6.2 Credit

(a) Required Credit Rating. Subject to Sections 6.2(b) and (c) below, Seller, or its Guarantor (if applicable), shall maintain a minimum credit rating no lower than the Required Credit Rating throughout the Term of this Agreement.

(b) Seller's Failure to Maintain Required Credit Rating. At any time during the Term of this Agreement, in the event that Seller's credit rating by either S&P or Moody's is lower than the Required Credit Rating, or in the event that Seller's senior unsecured long-term debt is not rated by S&P or Moody's, then Seller shall provide to the other within three (3) Business Days of request: (i) a Guaranty from a Guarantor with a credit rating equal to, or better than, the Required Credit Rating; or (ii) either a Letter of Credit or cash in an amount equal to the Credit Support Amount. If Seller's credit rating is below the Required Credit Rating on the Effective Date of this Agreement, Seller shall provide contemporaneously with the Agreement: (i) a Guaranty from a Guarantor with a credit rating equal to, or better than, the Required Credit Rating; or (ii) either a Letter of Credit or cash in an amount equal to the Credit Support Amount.

(c) Guarantor's Failure to Maintain Required Credit Rating. In the event that Seller's, and its Guarantor's, credit rating by either S&P or Moody's is lower than the Required Credit Rating, or in the event that Seller's, and its Guarantor's (if applicable), senior unsecured long-term debt is not rated by S&P or Moody's, then Seller shall provide to the other within three (3) Business Days of request either a Letter of Credit or cash in an amount equal to the Credit Support Amount.

ARTICLE 7: SELLER'S ADDITIONAL OBLIGATIONS

During the Term of this Agreement, Seller hereby agrees to perform the following obligations, in addition to Seller's obligations pursuant to Articles 3, 4, 5, and 6:

7.1 Construction, Operation and Maintenance of the Generating Facility

(a) Generally. Seller shall develop, finance, construct, own, operate, and maintain the Generating Facility in accordance with this Agreement, all Requirements of Law, Contractual Obligations, Permits and Prudent Utility Practice.

(b) Compliance. Seller shall, in its own name and at its own expense, seek, obtain, maintain, comply with and, as necessary, renew and modify from time to time, all Permits and other authorizations that are required by any Requirements of Law or

Governmental Authority as are necessary for Seller to engage in the activities and obligations required by the Agreement.

(c) Records. Seller shall keep complete and accurate operating and other records and all other data for the purposes of proper administration of this Agreement as reasonably required by Buyer, including such records as may be required by any Governmental Authority or Prudent Utility Practice.

(d) Disclosure. Seller shall provide to Buyer such information regarding the permitting, engineering, construction or operations of the Generating Facility as Buyer may from time to time reasonably request, subject to licensing or other restrictions of Seller or a third party with respect to confidentiality, disclosure or use.

(e) Insurance. Seller shall obtain and maintain the policies of insurance in amounts and with coverage as set forth in Exhibit 14 [Seller's Insurance Information].

7.2 Milestones

(a) Generally. Seller covenants that it will diligently pursue all Milestones set forth in Exhibit 7 [Milestones], including the Commercial Operation Date. The Parties agree that time is of the essence in connection with the completion of the Generating Facility, and that certain Milestones for the development, financing and construction of the Generating Facility must be achieved in a timely fashion or Buyer shall suffer damages. Seller shall achieve the Milestones by the corresponding dates set forth in Exhibit 7 [Milestones].

(b) Monthly Reports. Starting on the Effective Date, Seller shall provide to Buyer monthly progress reports concerning the progress towards completion of the Milestones. In addition, within five (5) Business Days of the completion of each Milestone, Seller shall provide a certification to Buyer (along with any supporting documentation) demonstrating the satisfaction of such Milestone. Seller shall provide to Buyer additional information concerning Seller's progress towards, or confirmation of, achievement of the Milestones, as Buyer may reasonably request from time to time.

(c) Notice of Failure To Achieve a Milestone. Upon becoming aware that Seller will, or is reasonably likely to, fail to achieve one or more Milestone(s) by the required date, for any reason including a Force Majeure Event, Seller shall so notify Buyer in writing as soon as is reasonably practical. Such notice shall explain the cause of the delay, provide an updated date for achievement of the Milestone(s), and describe Seller's plan for meeting such Milestone(s). Seller's notice will also explain any impact such delay may or will have on any other Milestone, and the measures to be taken to mitigate such impact.

(d) Failure To Achieve Milestone. In the event that Seller fails to meet any Milestone by the applicable Milestone deadline as set forth in Exhibit 7 [Milestones], as such deadline may be extended as a result of a Force Majeure Event in accordance with Section 7.2(e), Seller shall be liable for Delay Liquidated Damages for each full month (with parts of a month *pro rated*) that Seller is late in satisfying the Milestone. So long as Seller is paying such Delay Liquidated Damages on a monthly basis Buyer shall not be

permitted to terminate this Agreement, provided that in no event shall the combined extensions by payment of Delay Liquidated Damages for any or all of the Milestones exceed twelve (12) months. If any Milestone has not been satisfied within twelve (12) months following the relevant Milestone deadline, or if for any reason Seller fails to pay, or discontinues paying, the monthly Delay Liquidated Damages provided for above, Seller shall have committed an Event of Default. The twelve (12) month period referred to in the prior sentence shall not be extended as a result of a Force Majeure Event.

(e) Force Majeure Event. In the event that a Force Majeure Event causes any delay in the achievement of a Milestone, such Milestone's deadline may be extended, together with any Force Majeure Event extensions for other Milestones, for a period not to exceed, in the aggregate, six (6) months. The extension of the deadline for any Milestone shall extend the deadline for all subsequent Milestones, provided that in no event shall the combined extensions for Force Majeure Events for any or all of the Milestones exceed six (6) months. The extension provided for in this Section 7.2(e) shall be the only effect of a Force Majeure Event on Seller's obligations with respect to the Milestones.

(f) Waiver of Right. Buyer may, at its discretion, grant waivers for Seller's failure to meet any of the Milestones, but in no way shall any such waiver constitute a waiver of any future failures by Seller to meet other Milestones.

7.3 Commercial Operation Performance Tests

No later than fourteen (14) days prior to conducting its Commercial Operation Performance Tests, Seller shall notify Buyer of the date on which it intends to conduct such tests. Within seven (7) days of the successful completion of Seller's Commercial Operation Performance Tests, Seller shall provide to Buyer written notification of the Commercial Operation Date, including any relevant data demonstrating that Commercial Operation has occurred. Buyer has the right to be present during any Commercial Operation Performance Test, and to receive all information, including meter and performance data associated with such tests. Seller may change the date for such tests upon written notice to Buyer, provided that Buyer has at least fourteen (14) days' notice of the date of such tests.

7.4 Performance Guaranties

(a) Availability. By noon on Wednesday of each week throughout the Term, Seller shall deliver to Buyer a report detailing the expected Availability of the Generating Facility for the next week and the actual availability of the Generating Facility for the preceding week. The report shall include any and all full or partial unit shut-downs or derations, Force Majeure Events, scheduled maintenance, forced outages, curtailments, and other events affecting Availability. Unless challenged by Buyer, Seller's report of actual Availability shall determine such Availability. If challenged, Seller's report shall be considered Seller's determination of Availability and shall not be considered evidence of actual Availability. Seller shall provide to Buyer, upon request, all information concerning Availability as Buyer may reasonably request. Seller shall, with respect to each Contract Year, maintain an Availability of ninety-five percent (95%) or more during

the Peak Months and an Availability of eighty percent (80%) or more during the Non-Peak Months. Within thirty (30) days of the end of each Peak Months and Non-Peak Months, Seller shall provide a period performance report detailing the actual Availability of the Generating Facility during the given period of months. In the event that Seller fails to meet the Availability during either the Peak Months or the Non-Peak Months of any Contract Year, Seller shall pay to Buyer within thirty (30) days of the period performance report, or, at Buyer's option (as effected by written notice to Seller within fifteen (15) days of the period performance report), Buyer may offset payments to Seller in the next monthly billing statement, an amount equal to the Availability Shortfall Damages.

(b) Expected Annual Contract Quantity.

- (i) For all resources not identified as Intermittent Resources, if during any Contract Year, other than the first and last Contract Years, Seller fails to Schedule and deliver to Buyer hereunder from the Generating Facility seventy percent (70%) or more of the Expected Annual Contract Quantity for any reason Seller shall pay to Buyer the product of (i) the positive difference between the Replacement Price and the Contract Price, and (ii) the difference between seventy percent (70%) of the Expected Annual Contract Quantity and the amount of Energy actually Scheduled and delivered.
- (ii) For all resources identified as Intermittent Resources, if during any Contract Year, other than the first and last Contract Years, Seller fails to Schedule and deliver one hundred and forty percent (140%) of the Expected Annual Contract Quantity on a rolling two (2) year basis, Seller shall pay to Buyer the product of (i) the positive difference between the Replacement Price and the Contract Price, and (ii) the difference between one hundred and forty percent (140%) of the Expected Annual Contract Quantity and the amount of Energy actually Scheduled and delivered.
- (iii) For all resources, if Seller is prevented from generating or delivering Output due to a Force Majeure Event, Seller's obligation under this Section 7.4(b) shall be reduced to the extent of such impact.
- (iv) Any dispute regarding the calculation of the Replacement Price shall be resolved in accordance with Section 11.2(d) of this Agreement.

(c) Limitations. If during any Contract Year, Seller pays to Buyer amounts under Section 7.4(a), such amounts shall be subtracted from any amounts that Seller may also owe to Buyer under Section 7.4(b); provided that the difference shall not be less than zero. The Parties recognize and agree that (i) the actual damages to Buyer for a failure by Seller to meet the required Availability or to deliver the Expected Annual Contract Quantity are difficult or inconvenient to determine, (ii) payment of amounts by Seller pursuant to this Section 7.4 is an appropriate remedy, and (iii) any such payment does not constitute a forfeiture or penalty of any kind, but rather constitutes anticipated costs to Buyer under the terms of this Agreement.

7.5 Obligation to Schedule and Deliver

- (a) Scheduling. Seller shall be responsible for designating a Scheduling Coordinator for the transmission of Energy from the Generating Facility to the Delivery Point in accordance with applicable ISO rules. The Scheduling Coordinator shall be identified in Exhibit 10 [Operations Forecasts and Scheduling Protocols]. Seller may change its Scheduling Coordinator upon thirty-five (35) days advance written notice to Buyer. Seller shall Schedule or cause to be Scheduled the Energy generated by the Generating Facility in accordance with, and shall at all times comply with, all applicable ISO requirements and the provisions of Exhibit 10 [Operations Forecasts and Scheduling Protocols].
- (b) Agreement with Transmission Provider. Seller shall, at its own cost and expense, negotiate and enter into an Interconnection Agreement and such other agreements with the Transmission Provider as needed to enable Seller to transmit Energy to the Delivery Point.
- (c) Agreements with ISO. Seller shall, at its own cost and expense, negotiate and enter into any agreements with the ISO required by the ISO for generators delivering power into the ISO-controlled grid, including a Meter Service Agreement for ISO Metered Entities and a Participating Generator Agreement.
- (d) Start-ups and Shut-downs. Seller shall coordinate all Generating Facility start-ups and shut-downs, in whole or in part, with Buyer in accordance with ISO scheduling protocols and the reasonable protocols established by Buyer that are not inconsistent with the ISO Tariff and ISO procedures, as specified in Exhibit 10 [Operations Forecasts and Scheduling Protocols].

7.6 Modifications to the Generating Facility

Seller shall obtain Buyer's written consent, which shall not be unreasonably withheld or delayed prior to making any modifications to the Generating Facility that could adversely affect Seller's or Buyer's ability to perform its obligations under this Agreement, including the delivery of the Expected Annual Contract Quantity and meeting the Availability requirements of Section 7.4. Any such modifications shall be conducted in accordance with Good Utility Practice and all applicable laws and reliability criteria, as such may be amended from time to time.

ARTICLE 8: FORCE MAJEURE

8.1 Force Majeure Events

- (a) Excuse. Subject to Section 8.2 below, and except as expressly set forth herein, neither Party shall be considered in default under this Agreement for any delay or failure in its performance under this Agreement (including any obligation to deliver or accept Output) if such delay or failure is due to a Force Majeure Event, but only to the extent that:

- (i) such Force Majeure Event is not attributable to fault or negligence on the part of that Party;
 - (ii) such Force Majeure Event is caused by factors beyond that Party's reasonable control; and
 - (iii) despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate or overcome such event and the consequences thereof, the Party affected has been unable to prevent, avoid, mitigate or overcome such event or consequences.
- (b) Definition. "Force Majeure Event" may include, subject to Section 8.1(a) above and (c) below:
- (i) acts of God such as storms, floods, lightning and earthquakes;
 - (ii) sabotage or destruction by a third party of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;
 - (iii) Transmission System or generating equipment failure;
 - (iv) war, riot, acts of a public enemy or other civil disturbance;
 - (v) strike, walkout, lockout or other significant labor dispute;
 - (vi) curtailment by the ISO, or its successor, but only to the extent that the ISO declares a "Force Majeure" under the ISO Tariff; or
- (c) Exclusion. "Force Majeure Event" does not include the following:
- (i) economic hardship of either Party;
 - (ii) an Outage, except if caused directly by an event or circumstance that meets the requirements set forth in this Section 8.1;
 - (iii) failure or delay in the granting of Permits;
 - (iv) failures or delays by the Transmission Provider or the ISO in entering into, or performing under, all agreements with Seller contemplated by this Agreement;
 - (v) curtailment or interruption of transmission services, other than by the ISO where the ISO declares a "Force Majeure" under the ISO Tariff; or
 - (vi) insufficiency, unavailability, failure, or diminishment of [*insert resource type*] resource, except as a result of an event that would otherwise qualify as a Force Majeure Event.

8.2 Conditions

In addition to the conditions set forth in Section 8.1(a) above, a Party may rely on a claim of a Force Majeure Event to excuse its performance only to the extent that such Party:

- (i) provides prompt notice of such Force Majeure Event to the other Party, giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement;
- (ii) exercises all reasonable efforts to continue to perform its obligations under this Agreement;
- (iii) expeditiously takes action to correct or cure the event or condition excusing performance so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the problem; provided, however, that settlement of strikes or other labor disputes shall be completely within the sole discretion of the Party affected by such strike or labor dispute;
- (iv) exercises all reasonable efforts to mitigate or limit damages to the other Party; and
- (v) provides prompt notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance.

8.3 Termination Due To Force Majeure Event

In addition to and without limiting any other provisions of this Agreement, if a Party is prevented from performing its material obligations under this Agreement for a period of either (i) three hundred and sixty five (365) consecutive days or more, or (ii) seven hundred and thirty (730) non-consecutive days or more (whether full or partial days), the unaffected Party may terminate this Agreement, without liability of either Party to the other, upon thirty (30) days written notice at any time during the Force Majeure Event.

ARTICLE 9: DEFAULT/REMEDIES/TERMINATION

9.1 Events of Default Generally

An “Event of Default” shall mean, with respect to each Party, the occurrence of any of the following:

- (i) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within thirty (30) Business Days after written notice;

- (ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- (iii) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for the obligations set forth in Section 7.4, the exclusive remedies for which are provided in such Section) if such failure is not remedied within thirty (30) days after written notice (provided that if such failure is not capable of being remedied within such period, then for such longer period as is reasonably needed to effect the remedy, not to exceed one-hundred-eighty (180) days, so long as the failing Party diligently pursues such remedy);
- (iv) the initiation of an involuntary proceeding against such Party under the bankruptcy or insolvency laws, which involuntary proceeding remains undismissed for sixty (60) days, or in the event of the initiation by such Party of a voluntary proceeding under the bankruptcy or insolvency laws;
- (v) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party; or
- (vi) with respect to each Party's Guarantor, if any:
 - 1. if any representation nor warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
 - 2. the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty made in connection with this Agreement and such failure is not remedied within three (3) Business Days after written notice;
 - 3. the initiation of an involuntary proceeding against such Guarantor under the bankruptcy or insolvency laws, which involuntary proceeding remains undismissed for sixty (60) consecutive days, or in the event of the initiation by such Guarantor of a voluntary proceeding under the bankruptcy or insolvency laws;
 - 4. the failure of a Guarantor's Guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party to which such Guaranty shall relate without the written consent of the other Party; or

5. if a Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any Guaranty.

9.2 Additional Events of Default by Seller

In addition to the Events of Default in Sections 7.2 and 9.1 above, the following shall each constitute an “Event of Default” by Seller:

- (i) Seller Schedules and/or delivers to Buyer energy or other product from a resource other than the Generating Facility specified in this Agreement;
- (ii) With respect to a Generating Facility that is not identified as an Intermittent Resource, Seller fails for any reason, including as a result of a Force Majeure Event, to Schedule and/or deliver at least one-half of the Expected Annual Contract Quantity during any Contract Year, other than the first and last Contract Years;
- (iii) With respect to a Generating Facility that is identified as an Intermittent Resource, Seller fails for any reason, including as a result of a Force Majeure Event, to Schedule and/or deliver at least one-half of the Expected Annual Contract Quantity during one of any two consecutive Contract Years, not including the first and last Contract Years;
- (iv) Seller fails to satisfy the creditworthiness requirements set forth in Section 6.2 of this Agreement;
- (v) Seller sells or transfers Buyer’s share of the Output (or any individual component thereof) to any Person other than Buyer; or
- (vi) Seller fails to comply with the terms of Buyer’s right of first refusal as described in Section 3.5 of this Agreement.

9.3 Remedies; Termination for Default

(a) Termination for Default. In the event the defaulting Party fails to cure the Event of Default within the period for curative action under Sections 9.1 or 9.2, as applicable, the non-defaulting Party may terminate the Agreement by notifying the defaulting Party in writing of (i) the decision to terminate, and (ii) the effective date of the termination.

(b) Remedies. For all claims, causes of action and damages with respect to an Event of Default, in addition to the right to termination under Section 9.3(a), the non-defaulting Party shall be entitled to foreclose upon, or otherwise employ, any security provided by the defaulting Party, and to recover actual damages allowed by law unless otherwise limited by this Agreement. Neither the enumeration of Events of Default in Sections 9.1 and 9.2, nor the termination of this Agreement by a non-defaulting Party pursuant to Section 9.3(a), shall limit the right of a non-defaulting Party to rights and remedies available at law, including claims for breach of contract or failure to perform by the other

Party and for direct damages incurred by the non-defaulting Party as a result of the termination of this Agreement.

(c) Limitations. Except as otherwise specifically and expressly provided in this Agreement, neither Party shall be liable to the other under this Agreement for any indirect, special or consequential damages, including loss of use, loss of revenues, loss of profit, interest charges, cost of capital or claims of its customers or members to which service is made. Under no circumstances shall the non-defaulting Party be required to make a termination payment or other payment in respect of any damages to the defaulting Party (except for payments due under this Agreement for performance prior to termination).

9.4 Indemnification

Seller and Buyer agree to defend, indemnify, and hold each other, and their respective officers, directors, employees and agents, harmless from and against all claims, demands, losses, liabilities, and expenses (including reasonable attorneys' fees) (collectively, "Damages") for personal injury or death to persons and damage to each other's physical property or facilities or the property of any other Person to the extent arising out of, resulting from, or caused by the negligent or intentional and wrongful acts, errors, or omissions of the indemnifying Party. This indemnification obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of the indemnitees but the indemnifying Party's liability to pay Damages to the indemnified Party shall be reduced in proportion to the percentage by which the indemnitees' negligent or intentional acts, errors or omissions caused the Damages. Neither Party shall be indemnified for its Damages resulting from its sole negligence or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

9.5 Buyer's Right to Operate

If an Event of Default under Sections 9.2(ii) or 9.2(iii) occurs, then Buyer or its designee may, but shall not be obligated to, step-in and assume operational control from Seller of the Generating Facility; provided that Buyer shall not be permitted to step-in and take control so long as Seller or any of Seller's Lenders are using commercially reasonable efforts to remedy the Events of Default. Buyer, its employees, contractors and designees shall have the unrestricted right to enter the Generating Facility to the extent necessary to operate the Generating Facility. Upon the exercise of this right, Buyer or its designee shall at all times operate the Generating Facility using Prudent Utility Practice and shall comply, to the extent commercially practicable, with the terms of this Agreement. Notwithstanding the foregoing, Seller shall not be excused from any obligation or remedy available to Buyer as a result of Buyer's operation of, or election not to operate, the Generating Facility. Buyer shall pay Seller the applicable Contract Price for Output provided hereunder, less any costs incurred by Buyer to operate the Generating Facility. Buyer shall indemnify and hold Seller harmless from any liability to third parties arising out of Buyer's failure to operate the Generating Facility using Prudent Utility Practice.

Upon Buyer's satisfaction that Seller has the ability to operate the Generating Facility in accordance with this Agreement, Seller shall resume operational control.

ARTICLE 10: REPRESENTATIONS, WARRANTIES AND COVENANTS

10.1 Seller's Representations, Warranties and Covenants

Seller represents, warrants and covenants to Buyer that as of the date of execution of this Agreement:

- (i) Seller is duly organized and validly existing as a [*Seller's business registration*] under the laws of [*State of Registration*], and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement and Seller is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;
- (ii) Seller has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder; all such actions have been duly authorized by all necessary proceedings on its part. As of the Commercial Operation Date, (a) the Generating Facility is a "qualifying small power production facility" as that term is defined in Section 3(17)(C) of the Federal Power Act, and will possess all of the exemptions from regulation provided in 18 C.F.R. Sections 292.601(c) and 292.602; or (b) Seller has market-based rate authority, and has made all filings required in connection with this Agreement, under Federal Power Act;
- (iii) throughout the Term: (a) the Generating Facility will qualify and be certified by the California Energy Commission ("CEC") as an ERR under the rules and requirements in effect as of the Effective Date; and (b) the Output delivered to Buyer will qualify as output from an ERR under the requirements of the RPS Legislation and under the rules and requirements in effect as of the Effective Date;
- (iv) this Agreement has been duly and validly executed and delivered by Seller and, as of the Effective Date, constitutes a legal, valid and binding obligation of Seller, enforceable in accordance with its terms against Seller, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity;
- (v) there are no actions, suits, proceedings or investigations pending or, to the knowledge of Seller, threatened in writing against Seller, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Seller, or to

result in any impairment of Seller's ability to perform its obligations under this Agreement;

- (vi) Seller will deliver to Buyer at the Delivery Point the Output free and clear of all liens, security interests, claims and encumbrances or any interest therein, or thereto, by any Person.
- (vii) Seller holds and will hold throughout the Term, the rights to all Environmental Attributes and Capacity Attributes, which it has conveyed and has committed to convey to Buyer hereunder; and
- (viii) the execution, delivery and performance of this Agreement by Seller will not conflict with its governing documents, any applicable laws, or any covenant, agreement, understanding, decree or order to which Seller is a party or by which it is bound or affected.

10.2 Buyer Representations and Warranties

Buyer represents and warrants to Seller that as of the date of execution of this Agreement:

- (i) Buyer is a joint powers agency established pursuant to the laws of the State of California, and has all requisite corporate power and authority to own, lease, and operate its properties and to carry on its business as is now being conducted;
- (ii) Buyer is duly qualified or licensed to do business as a joint powers agency and is in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so duly qualified or licensed and in good standing would not have a material adverse effect;
- (iii) Buyer has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part;
- (iv) the execution, delivery and performance of this Agreement by Buyer will not conflict with its governing documents, any applicable laws or any covenant, agreement, understanding, decree or order to which Buyer is a party or by which it is bound or affected;
- (v) this Agreement has been duly and validly executed and delivered by Buyer and, as of the Effective Date, constitutes a legal, valid and binding obligation of Buyer, enforceable in accordance with its terms against Buyer, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity; and

- (vi) there are no actions, suits, proceedings or investigations pending or, to the knowledge of Buyer, threatened in writing against Buyer, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Buyer, or to result in any impairment of Buyer's ability to perform its obligations under this Agreement.

ARTICLE 11: MISCELLANEOUS

11.1 Notices

All written notices, requests, statements or payments under this Agreement shall, unless otherwise specified herein, be deemed properly sent if delivered in person or sent by facsimile, reliable overnight courier, or sent by registered or certified mail, postage prepaid to the persons specified in Exhibit 12 [Contacts]. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during a Business Day, and otherwise shall be effective at the close of the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

11.2 Dispute Resolution

(a) Arbitration or Mediation. Subject to Section 5.1(b), any dispute under this Agreement between Seller and Buyer shall, at the request of any Party, be referred to a senior representative of each of the Parties for resolution on an informal basis as promptly as practicable. In the event the senior representatives are unable to resolve the dispute, the matter may be submitted to arbitration or mediation on such terms and conditions as the Parties may agree.

(b) Litigation. In the event the Parties are unable to satisfactorily resolve the Dispute within thirty (30) calendar days of such referral or such other period as the Parties may mutually agree, subject to any extensions of time as may be mutually agreed upon in writing, or any arbitration agreement, either Party may initiate litigation in a court of law with jurisdiction pursuant to Section 11.12, which shall be the exclusive venue to litigate disputes.

(c) Remedies. Nothing in this Section 11.2 shall be construed to delay the exercise of remedies pursuant to Section 9.3 pending the resolution of any dispute.

(d) Expert Arbitration. Notwithstanding the provisions of Sections 11.2(a) or (b), disputes expressly referred for resolution under this Section 11.2(d) shall be resolved in the following manner.

- (i) Each Party shall, within fourteen (14) days of referral, appoint an expert for inclusion on the arbitral panel.

- (ii) Within fourteen (14) days of the later of such appointments, the two Party-appointed experts shall appoint a third expert. The third expert shall have at least five (5) years of experience in electricity generation and sales matters in California and shall not have been employed by either Party, including as a consultant, or have had any other financial relationship to either Party, in the last three (3) years.
- (iii) In the event that a third expert cannot be agreed upon, within such fourteen (14) day period, the Parties shall request [*Name to be determined*] to appoint the third expert.
- (iv) Within fourteen (14) days of the appointment of the third expert, each Party shall provide to the experts and the other Party such materials as it determines to be relevant to the dispute. The experts may, in their judgment, convene a hearing at which each Party may be subject to inquiry by the experts and/or the other Party; provided, however, such Party shall not be required to provide materials beyond those already provided.
- (v) The experts shall render a decision on the dispute by a simple majority vote within sixty (60) days of the selection of the third expert, and shall produce a written explanation for their decision.

11.3 Regulatory Compliance

Each Party shall at all times comply with all applicable laws, ordinances, rules and regulations applicable to it. As applicable, each Party shall give all required notices, shall procure and maintain all Permits necessary for performance of this Agreement, and shall pay its respective charges and fees in connection therewith. In the event of any change to the ISO Tariff that materially impacts either Party's obligations or ability to perform under this Agreement, either Party may request that the Parties engage in good faith negotiations to amend this Agreement such that an equitable balance of benefits and burdens may be restored to the Parties. In the event that the Parties are unable to agree upon any amendments to this Agreement within sixty (60) days of the request for negotiations, either Party may invoke the dispute resolution provisions of Section 11.2(d). Pending any resolution under Section 11.2(d), the Parties shall continue to comply with the provisions of this Agreement.

11.4 No Dedication of Facilities

Any undertaking by one Party to the other under any provision of this Agreement shall not constitute the dedication of the Generating Facility or any portion thereof to the public or to any portion thereof.

11.5 Confidentiality

All Confidential Information obtained by either Party from the other Party shall be used only in connection with such Party's exercise of its rights or performance of its obligations under this Agreement and shall not be disclosed to any third party, except as

may be required by law (including the California Public Records Act, Cal. Government Code Section 6250, etq. seq.), applicable regulation or judicial process; provided, however, that if the receiving Party is required to disclose such Confidential Information by applicable law, regulation or legal process, the receiving Party shall promptly notify the disclosing Party of such pending disclosure prior to such disclosure; provided further that Buyer may, at any time, disclose any information (i) determined by its attorney to be required by law to be disclosed by a public entity such as the Buyer, and (ii) to those of its members that receive some or all of the Output, whether directly or indirectly, from Buyer. The provisions of this Section 11.5 shall survive for three (3) years after the termination of this Agreement.

11.6 Assignment

(a) Buyer. Buyer may, without the consent of Seller (and without relieving itself from liability hereunder) assign this Agreement or assign or delegate its rights and obligations under this Agreement, if such assignment is made to: (i) one or more of its members; or (ii) where such assignment does not occur by operation of law, any successor to Buyer provided such successor is a public utility holding a certificate of public convenience and necessity granted by the California Public Utilities Commission, or a municipal utility.

(b) Seller. Seller may, without the consent of Buyer (and without relieving itself from liability hereunder): pledge, encumber, or assign this Agreement or the account, revenues or proceeds hereof as collateral security in connection with any financing or other financial arrangements for the Generating Facility, provided that in connection with any such pledge, encumbrance, or assignment, the assignee agrees that upon any foreclosure or exercise of similar remedies upon the Generating Facility or material assets thereof, such assignee shall be bound by this Agreement.

(c) Written Consent Needed. Except as stated above, neither this Agreement nor any of the rights, interests, or obligations hereunder shall be assigned by either Party, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any assignment of this Agreement in violation of the foregoing shall be, at the option of the non-assigning Party, void.

(d) Binding on Parties. This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

11.7 Waiver of Rights

Waivers of any rights hereunder must be in writing and shall not be implied from performance or usage of trade. The failure of either party to this Agreement to enforce or insist upon compliance with or strict performance of any of the terms or conditions hereof, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions or rights, but the same shall be and remain at all times in full force and effect.

11.8 Section Headings

All titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the meaning of the contents or scope of the Agreement.

11.9 No Third Party Beneficiary

This Agreement shall not be construed to create rights in, or to grant remedies to, any third party (other than a permitted successor or assignee bound to this Agreement) as a beneficiary of this Agreement or any duty, obligation or undertaking established herein.

11.10 Forward Contract

The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a “forward contract” within the meaning of the United States Bankruptcy Code.

11.11 Applicable Law

This Agreement is made in the State of California and shall be interpreted and governed by the laws of the State of California and/or the laws of the United States, as applicable.

11.12 Venue

The Parties hereby submit to the exclusive jurisdiction of the federal courts for the Eastern District of the State of California; provided, however, that if such federal courts sitting in the Eastern District of the State of California refuse jurisdiction, the Parties agree to the exclusive jurisdiction of the state courts sitting in the County of Placer, State of California.

11.13 Nature of Relationship

The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. The Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and Buyer or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. A Party shall not have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or act as or be an agent or representative of or otherwise bind the other Party.

11.14 Good Faith and Fair Dealing; Reasonableness

The Parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement: (i) wherever the Agreement requires the consent, approval or similar action by a Party, such consent, approval or similar action shall not be unreasonably withheld or delayed; and (ii) wherever the Agreement gives a Party a right

to determine, require, specify or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.

11.15 Severability

Should any provision of this Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of this Agreement shall not be affected and shall continue in full force and effect. The Parties will, however, use their best endeavors to agree on the replacement of the void, illegal, or unenforceable provision(s) with legally acceptable clauses that correspond as closely as possible to the sense and purpose of the affected provision.

11.16 Counterparts

This Agreement may be executed in two or more counterparts and by different Parties on separate counterparts, all of which shall be considered one and the same Agreement, and each of which shall be deemed an original.

11.17 Cooperation

The Parties agree to reasonably cooperate with each other in the implementation and performance of the Agreement. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under this Agreement.

11.18 Limitation of Liabilities

To the extent permitted by law, no Party's directors, members of its governing bodies, officers or employees shall be liable to any other party or parties for any loss or damage to property, loss of earnings or revenues, personal injury, or any other direct, indirect, or consequential damages or injury, or punitive damages, which may occur or result from the performance or non-performance of this Agreement, including any negligence arising hereunder. Any liability or damages faced by an officer or employee of a federal agency or by that agency that would result from the operation of this provision shall not be inconsistent with federal law. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES

SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 9.4, IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

11.19 Further Assurances

The Parties hereto agree to execute and deliver promptly, at the expense of the Party requesting such action, any and all other and further instruments, documents and information that a Party may request, and that are reasonably necessary, or appropriate, to give full force and effect to the terms and intent of this Agreement.

11.20 Time is of the Essence

Time is of the essence to this Agreement and in the performance of all of the covenants, obligations and conditions hereof.

11.21 Construction

The Parties acknowledge that this Agreement was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against either Party on the basis that the Party drafted the language, but otherwise shall be interpreted according to the application of the rules on interpretation of contracts.

11.22 Entire Agreement; Integration

This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the Parties and supersedes any and all prior oral or written understandings. No amendment, addition to or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it, unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives on the Effective Date first written.

BUYER:

NORTHERN CALIFORNIA POWER AGENCY

By:_____

Name:_____

Title:_____

SELLER:

[NAME OF SELLER]

By:_____

Name:_____

Title:_____

EXHIBITS

<u>Exhibit 1</u>	Buyout Payment Form
<u>Exhibit 2</u>	Description of Generating Facility
<u>Exhibit 3</u>	Commercial Operation Performance Tests
<u>Exhibit 4</u>	Contract Price
<u>Exhibit 5</u>	Credit Support Amount
<u>Exhibit 6</u>	Expected Annual Contract Quantity Form
<u>Exhibit 7</u>	Milestones
<u>Exhibit 8</u>	Guaranty Agreement
<u>Exhibit 9</u>	Letter of Credit
<u>Exhibit 10</u>	Operations Forecasts and Scheduling Protocols
<u>Exhibit 11</u>	Form of Attestation
<u>Exhibit 12</u>	Payment / Wire Instructions
<u>Exhibit 13a</u>	Contacts, Buyer
<u>Exhibit 13b</u>	Contacts, Seller
<u>Exhibit 14</u>	Seller's Insurance Information

Exhibit 1

BUYOUT PAYMENT

Contract Year	Buyout Payment in US\$
Time period prior to the Commercial Operation Date	\$ [Buyout Payment Price or Formula]
Contract Year 1	\$ [Buyout Payment Price or Formula]
Contract Year 2	\$ [Buyout Payment Price or Formula]
Contract Year 3	\$ [Buyout Payment Price or Formula]
Contract Year 4	\$ [Buyout Payment Price or Formula]
Contract Year 5	\$ [Buyout Payment Price or Formula]
Contract Year 6	\$ [Buyout Payment Price or Formula]
Contract Year 7	\$ [Buyout Payment Price or Formula]
Contract Year 8	\$ [Buyout Payment Price or Formula]
Contract Year 9	\$ [Buyout Payment Price or Formula]
Contract Year 10	\$ [Buyout Payment Price or Formula]
Contract Year 11	\$ [Buyout Payment Price or Formula]
Contract Year 12	\$ [Buyout Payment Price or Formula]
Contract Year 13	\$ [Buyout Payment Price or Formula]
Contract Year 14	\$ [Buyout Payment Price or Formula]
Contract Year 15	\$ [Buyout Payment Price or Formula]

Exhibit 2

DESCRIPTION OF GENERATING FACILITY

Name:			
Owner:			
Location:			
Equipment:			
Type of Facility :			
Delivery Point:			
Operator:			
Buyer :	NCPA	Seller :	
Name		Name	
Signature		Signature	
Date		Date	

Exhibit 3

COMMERCIAL OPERATION PERFORMANCE TESTS

Seller shall coordinate and schedule with Buyer a Performance Test after completion of all equipment startup and commissioning activities. This Performance Test may be performed before completing punch list items. Buyer shall be permitted to witness the Performance Test, including access to and copies of control room logs, control system display screens, and instrumentation data for a reasonable period of time before, during and after the Performance Test, and may also concurrently conduct a site inspection of the Generating Facility, systems and equipment. Seller shall supply a written copy of the Performance Test results to Buyer within five (5) business days following the conclusion of such test. The Performance Test shall consist of uninterrupted operation of the Generating Facility for a period of no less than [REDACTED].

1) Compliance. The Performance Test shall demonstrate the ability of the Generating Facility to comply with all material safety, system reliability, environmental, and other Requirements of Law, this Agreement, and any related agreements, including any interconnection agreements.

2) Contract Capacity. The Performance Test shall demonstrate the ability of the Generating Facility to reliably generate the full Contract Capacity.

3)

4)

[TO BE FURTHER DETERMINED]

Exhibit 4

CONTRACT PRICE

Contract Price (Choose One)	
<input type="checkbox"/> 1)	Flat Rate Pricing: The Contract Price Shall be _____ (\$/MWh).
OR	
<input type="checkbox"/> 2)	Escalated Pricing: The Contract Price Shall be _____ (\$/MWh). beginning _____ (year). The Contract Price Shall be escalated each January 1st as follows: _____
OR	
<input type="checkbox"/> 3)	Defined Prices as stated to the right.

Defined Price	
Year	Price 3) \$/MWh
2007	
2008	
2009	
2010	
2011	
2012	
2013	
2014	
2015	
2016	
2017	
2018	
2019	
2020	
2021	
2022	
2023	
2024	
2025	
2026	
2027	
2028	
2029	
2030	
2031	

Exhibit 5

CREDIT SUPPORT AMOUNT

[TO BE DETERMINED]

Exhibit 6

EXPECTED ANNUAL CONTRACT QUANTITY

Contract Year	Expected Annual Contract Quantity
<i>Contract Year 1</i>	<i>[Expected Annual Contract Quantity]</i>
<i>Contract Year 2</i>	<i>[Expected Annual Contract Quantity]</i>
<i>Contract Year 3</i>	<i>[Expected Annual Contract Quantity]</i>
<i>Contract Year 4</i>	<i>[Expected Annual Contract Quantity]</i>
<i>Contract Year 5</i>	<i>[Expected Annual Contract Quantity]</i>
<i>Contract Year 6</i>	<i>[Expected Annual Contract Quantity]</i>
<i>Contract Year 7</i>	<i>[Expected Annual Contract Quantity]</i>
<i>Contract Year 8</i>	<i>[Expected Annual Contract Quantity]</i>
<i>Contract Year 9</i>	<i>[Expected Annual Contract Quantity]</i>
<i>Contract Year 10</i>	<i>[Expected Annual Contract Quantity]</i>
<i>Contract Year 11</i>	<i>[Expected Annual Contract Quantity]</i>
<i>Contract Year 12</i>	<i>[Expected Annual Contract Quantity]</i>
<i>Contract Year 13</i>	<i>[Expected Annual Contract Quantity]</i>
<i>Contract Year 14</i>	<i>[Expected Annual Contract Quantity]</i>
<i>Contract Year 15</i>	<i>[Expected Annual Contract Quantity]</i>
<i>Contract Year 16</i>	<i>[Expected Annual Contract Quantity]</i>
<i>Contract Year 17</i>	<i>[Expected Annual Contract Quantity]</i>
<i>Contract Year 18</i>	<i>[Expected Annual Contract Quantity]</i>
<i>Contract Year 19</i>	<i>[Expected Annual Contract Quantity]</i>
<i>Contract Year 20</i>	<i>[Expected Annual Contract Quantity]</i>
<i>Contract Year 21</i>	<i>[Expected Annual Contract Quantity]</i>
<i>Contract Year 22</i>	<i>[Expected Annual Contract Quantity]</i>
<i>Contract Year 23</i>	<i>[Expected Annual Contract Quantity]</i>
<i>Contract Year 24</i>	<i>[Expected Annual Contract Quantity]</i>
<i>Contract Year 25</i>	<i>[Expected Annual Contract Quantity]</i>

Exhibit 7

CONSTRUCTION MILESTONES

[TO BE DETERMINED]

Exhibit 8

GUARANTY AGREEMENT

This Guaranty Agreement (the "Guaranty") is made by [*Insert Guarantor's Name*] ("Guarantor"), a [*Insert Guarantor's business registration and location thereof*], in favor of Northern California Power Agency (individually and collectively, the "Counterparty").

WHEREAS, Counterparty is a party to the Renewable Energy Power Purchase Agreement between Northern California Power Agency and [*Insert Seller's Name*] ("Agreement") with [*Insert Seller's Name*], a subsidiary of Guarantor (the "Company"); and

WHEREAS, the Guarantor is the parent of Company, and will receive substantial and direct benefits from the transactions contemplated by the Agreement and has agreed to enter into this Guaranty to provide assurance for the payment obligations of Company in connection with the Agreement and to induce the Counterparty to enter into the Agreement.

NOW, THEREFORE, in consideration of good and valuable consideration, the adequacy, receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby agrees as follows:

1. **Guaranty.** The Guarantor hereby unconditionally, irrevocably and absolutely guarantees the full and punctual payment when due (subject to written demand in accordance with Paragraph 6 below) of Company's payment obligations arising under the Agreement, as such Agreement may be amended or modified by agreement between Company and the Counterparty from time to time (the "Guaranteed Obligations"). In addition, Guarantor shall reimburse Counterparty for all sums paid to Counterparty by Company with respect to such Guaranteed Obligations which Counterparty is subsequently required to return to Company or a representative of Company's creditors as a result of Company's bankruptcy, insolvency, reorganization, liquidation, receivership, or similar proceeding. The Guarantor's obligations and liability under this Guaranty shall be limited to payment obligations only and the Guarantor shall have no obligation to perform under the Agreement, including, without limitation, to sell, deliver, supply or transport gas, electricity or any other commodity.

If all or a part of any payment made by Guarantor to Counterparty hereunder is later determined to have been improper because such amount was not actually owed by Company to Counterparty under the Agreement, Counterparty shall repay such amount to Guarantor within ten (10) business days of written demand by Guarantor together with any interest, reasonable attorneys' fees, and/or costs of collection, if any, required by the Agreement to be paid by Counterparty in the collection of such amount.

2. **Guaranty Absolute.** The liability of Guarantor under this Guaranty shall be absolute, irrevocable and unconditional irrespective of:
 - (a) any defect or deficiency in the Agreement or any other documents executed in connection with the Agreement;
 - (b) any modification, extension or waiver of any of the terms of the Agreement;

- (c) any change in the time, manner, terms or place of payment of or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from the Agreement or any other agreement or instrument executed in connection therewith;
- (d) any sale, exchange, release or non-perfection of any property standing as security for the liabilities hereby guaranteed or any liabilities incurred directly or indirectly hereunder or any setoff against any of said liabilities, or any release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Guaranteed Obligations;
- (e) except as to applicable statutes of limitation, failure, omission, delay, waiver or refusal by the Counterparty to exercise, in whole or in part, any right or remedy held by the Counterparty with respect to the Agreement or any transaction under the Agreement;
- (f) any change in the existence, structure or ownership of the Guarantor or Company, or any bankruptcy, insolvency, reorganization, liquidation, receivership, or similar proceeding affecting Company or its assets; or
- (g) subject to Guarantor's reservations in the last sentence of this Paragraph 2, any dispute between Counterparty and the Company in connection with the Guaranteed Obligations.

The obligations of the Guarantor hereunder are several and not joint with Company or any other person, and are primary obligations for which the Guarantor is the principal obligor. There are no conditions precedent to the enforcement of this Guaranty, except as expressly contained herein. It shall not be necessary for the Counterparty, in order to enforce payment by the Guarantor under this Guaranty, to exhaust its remedies against Company, any collateral pledged by Company, any other guarantor, or any other person liable for the payment or performance of the Guaranteed Obligations. This Guaranty is one of payment and not of collection and shall apply regardless of whether recovery of all such Guaranteed Obligations may be discharged, or uncollectible in any bankruptcy, insolvency, reorganization, liquidation, receivership, or similar proceeding affecting Company or its assets. This Guaranty is a continuing guaranty and shall apply to all present and future transactions entered into under the Agreement.

Without limiting Guarantor's own defenses and rights hereunder, Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which Company is or may be entitled to arising from or out of the Agreements or otherwise, except as limited herein and except for defenses arising out of any lack of authority by Company to enter into the Guaranteed Obligations or the bankruptcy, insolvency, reorganization, liquidation, receivership, or similar proceeding affecting Company or its assets.

3. **Waiver.** Guarantor hereby waives:

- (a) except for the acceptance required from Counterparty below, notice of acceptance of this Guaranty, notice of the creation or existence of any of the Guaranteed

Obligations and notice of any action by the Counterparty in reliance hereon or in connection herewith;

- (b) notice of the entry into the Agreement between Company and the Counterparty and notice of any amendments, supplements or modifications thereto; or any waiver of consent under the Agreement, including waivers of the payment and performance of the obligations thereunder;
 - (c) notice of any increase, reduction or rearrangement of Company's obligations under the Agreement or notice of any extension of time for the payment of any sums due and payable to the Counterparty under the Agreement;
 - (d) except as expressly set forth herein, presentment, demand for payment, notice of dishonor or nonpayment, protest and notice of protest or any other notice of any other kind with respect to the Guaranteed Obligations; and
 - (e) any requirement that suit be brought against, or any other action by the Counterparty be taken against, or any notice of default or other notice be given to, or any demand be made on, Company or any other person, or that any other action be taken or not taken as a condition to the Guarantor's liability for the Guaranteed Obligations under this Guaranty or as a condition to the enforcement of this Guaranty against the Guarantor.
4. **Subrogation.** The Guarantor shall be subrogated to all rights of the Counterparty against Company in respect of any amounts paid by the Guarantor pursuant to the Guaranty, provided that the Guarantor waives any rights it may acquire by way of subrogation under this Guaranty, by any payment made hereunder or otherwise (including, without limitation, any statutory rights of subrogation under Section 509 of the Bankruptcy Code, 11 U.S.C. §509, or otherwise), reimbursement, exoneration, contribution, indemnification, or any right to participate in any claim or remedy of the Counterparty against Company or any collateral which the Counterparty now has or acquires, until all of the Guaranteed Obligations shall have been irrevocably paid to the Counterparty in full. If (a) the Guarantor shall perform and shall make payment to the Counterparty of all or any part of the Guaranteed Obligations and (b) all the Guaranteed Obligations shall have been paid in full, the Counterparty shall, at the Guarantor's request, execute and deliver to the Guarantor appropriate documents necessary to evidence the transfer by subrogation to the Guarantor of any interest in the Guaranteed Obligations resulting from such payment by the Guarantor.
5. **Notices.** All demands, notices and other communications provided for hereunder shall, unless otherwise specifically provided herein, (a) be in writing addressed to the party receiving the notice at the address set forth below or at such other address as may be designated by written notice, from time to time, to the other party, and (b) be effective upon delivery, when mailed by U.S. mail, registered or certified, return receipt requested, postage prepaid, or personally delivered. Notices shall be sent to the following addresses:

If to Counterparty:

NORTHERN CALIFORNIA POWER AGENCY
180 Cirby Way
Roseville, CA 95678
Attention: Treasurer/Controller

If to Guarantor:

[Insert Guarantor's Address]

6. **Demand and Payment.** Counterparty is not entitled to make demand upon Guarantor until a default occurs in payment of any Guaranteed Obligations by Company to Counterparty. Any demand by the Counterparty for payment hereunder shall be in writing, reference this Guaranty, reference the Guaranteed Obligations, and signed by a duly authorized representative of the Counterparty and delivered to the Guarantor pursuant to Paragraph 5 hereof. There are no other requirements of notice, presentment or demand. The Guarantor shall pay, or cause to be paid, such Guaranteed Obligations within ten (10) business days of receipt of such demand.
7. **No Waiver; Remedies.** Except as to applicable statutes of limitation, no failure on the part of Counterparty to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.
8. **Term; Termination.** This Guaranty shall continue in full force and effect from the Effective Date until all Guaranteed Obligations arising with respect to the Agreement have been fully satisfied.
9. **Assignment; Successors and Assigns.** The Guarantor shall not assign its rights hereunder without the prior written consent of the Counterparty, and any assignment without such prior written consent shall be null and void and of no force or effect. This Guaranty shall be binding upon and inure to the benefit of the each party hereto and their respective successors and permitted assigns.
10. **Amendments, Etc.** No amendment of this Guaranty shall be effective unless in writing and signed by Guarantor and Counterparty. No waiver of any provision of this Guaranty nor consent to any departure by the Guarantor therefrom shall in any event be effective unless such waiver shall be in writing and signed by Counterparty. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it was given.

11. **Caption.** The captions in this Guaranty have been inserted for convenience only and shall be given no substantive meaning or significance whatsoever in construing the terms and provisions of this Guaranty.

12. **Representation and Warranties.**

The Guarantor represents and warrants as follows:

- (a) The Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full corporate power to execute, deliver and perform this Guaranty.
- (b) The execution, delivery and performance of this Guaranty have been and remain duly authorized by all necessary corporate action and do not contravene the Guarantor's constitutional documents or any contractual restriction binding on the Guarantor or its assets.
- (c) This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against Guarantor in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditor's rights and to general equity principles.

13. **Foreign Currency Obligations.** Subject to the limitation of Guarantor's total liability set forth in Paragraph 1 hereof, the Guarantor shall make payment in the currency in which the Company is required to pay its payment obligations (the "Original Currency"). For the purposes of calculating Guarantor's total liability hereunder and applying the limitation on Guarantor's total liability, the value of the payment obligation in the Original Currency shall be converted to US Dollars by the Guarantor at the rate equal to the applicable spot exchange rate of a large commercial bank located in Canada or the United States on the date that payment is made by the Guarantor.

14. **GOVERNING LAW. THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD OR REFERENCE TO THE CONFLICT OF LAWS PRINCIPLES OF ANY JURISDICTION. GUARANTOR HEREBY CONSENTS TO THE NON-EXCLUSIVE JURISDICTION OF THE FEDERAL COURTS IN THE EASTERN DISTRICT, CALIFORNIA IN CONNECTION WITH ANY DISPUTE ARISING UNDER THIS GUARANTY.** However, if any provision of this Guaranty shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Guaranty.

15. **Entire Agreement and Termination of Prior Guaranty.** This Guaranty constitutes the entire agreement and understanding between Guarantor and Counterparty with respect to the Guaranteed Obligations and supersedes and replaces in its entirety any and all guaranties previously issued by Guarantor to Counterparty with respect to the Guaranteed Obligations, or any part of them.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be duly executed and delivered by its duly authorized representative effective as of this ____ day of _____, 200[] ("Effective Date").

[*Guarantor's Name*]

By: _____

Name:

Title:

ACCEPTED AND AGREED TO
THIS ____ DAY OF _____, 200[]

By: _____

Name:

Title:

Exhibit 9

FORM OF LETTER OF CREDIT

[TO BE DETERMINED]

Exhibit 10

**OPERATIONS FORECASTS
and
SCHEDULING PROTOCOLS**

1. Annual Operations Forecast

- 1.1. No later than September 10th of each Contract Year, Seller will provide an Annual Operations Forecast detailing hourly expected generation and all proposed planned outages for the next Calendar Year. The Annual Operations Forecast for the first Calendar Year shall be provided no later than ninety (90) days prior to the Commercial Operation Date.
- 1.2. Buyer may request modifications to the Annual Operations Forecast at any time, and Seller shall use good faith efforts to accommodate Buyer's requested modifications.
- 1.3. Seller shall not conduct planned outages at times other than as set forth in its Annual Operations Forecast, unless approved in advance by Seller, which approval shall not be withheld or delayed unreasonably.
- 1.4. Seller shall not conduct planned outages during the Peak Months.

2. Short Term Operations Forecasts

2.1. Quarterly Operations Forecast

- 2.1.1. Twenty (20) days prior to beginning of each quarter, Seller shall provide a Quarterly Operations Forecast by hour of expected generation and all proposed planned outages.
- 2.1.2. Quarterly Operations Forecast will also include any requested additions or modifications to planned outages for the next twelve (12) months.
- 2.1.3. Buyer will approve or require modifications to the proposed Quarterly Operations Forecast within ten (10) calendar days of receipt of the Quarterly Operations Forecast.
- 2.1.4. If required by Buyer, Seller will provide a modified Quarterly Operations Forecast to Buyer no later than seven (7) calendar days after receipt of required modifications from Buyer.

2.2. Weekly Update

- 2.2.1. No later than 14:00 each Wednesday prior to the following week (Sunday through Saturday), Seller may provide an electronic update, in a format specified by Buyer, to the Quarterly Operations Forecast for the next seven (7) calendar

days

- 2.2.2. The Weekly Update shall include hourly expected generation and all proposed planned Outages.

3. Outage Detail for Annual and Short Term Operations Forecasts

- 3.1. Outage information provided by Seller is to include, at a minimum, start and stop time of Outage, capacity out of service (kWh), equipment out of service, and reason for the Outage.

4. General Scheduling Protocols

- 4.1. Daily modifications to forecasts. Unless otherwise mutually agreed, Seller may make changes to the weekly forecasts by providing such changes to Buyer prior to 08:00 two (2) Business Days before the active scheduling day.
 - 4.1.1. Active scheduling day as determined by the WECC Prescheduling calendar.
 - 4.1.2. Example: For power that is scheduled for generation or delivery on Thursday, March 29, changes must be submitted to Buyer no later than 08:00 on Tuesday, March 27.
- 4.2. Hourly modifications to active schedules. Unless otherwise mutually agreed, Seller may make changes to active schedules by providing such changes to Buyer with a minimum of four (4) hours notice before the active hour to be changed. Changes to active schedules are limited to two (2) changes per day, excluding forced outages, unless otherwise agreed to between the parties. One request for a schedule change, of one hour or multiple hours duration, constitutes one schedule change.
 - 4.2.1. Example: For power that is scheduled for generation or delivery in hour ending 15:00 (for the period from 14:01 to 15:00), changes must be submitted to Buyer no later than 10:00.
- 4.3. At Seller's request, Buyer may modify generation and load schedules for unforeseen circumstances in accordance with the above scheduling timeline constraints and Buyer's Schedule Coordination Agreement.
- 4.4. In the absence of forecasts and schedules as required by this Agreement or this Exhibit, Buyer shall utilize the most current information provided by Seller in the development and submission of Schedules.
- 4.5. Daily or Hourly modifications do not modify Monthly Contractual Energy for issues related to pricing or default.

5. Additional Scheduling Protocols When NCPA is the Scheduling Coordinator

- 5.1. Seller is to notify NCPA of all planned or forced generation outages to ensure compliance

with ISO Outage Coordination and Enforcement Protocols.

- 5.1.1. Outage information provided by Seller is to include, at a minimum, start and stop time of Outage, capacity out of service (kW), equipment out of service, and reason for the Outage.
- 5.1.2. Planned Outages not included in the Annual Operations Forecast, the Quarterly Operations Forecast, or the Weekly Update, shall be provided by Seller to Buyer at least four (4) business days prior to the start of the requested outage.

5.2. Forced Outages

- 5.2.1. "Forced Outages" are any unplanned reduction in the capability of a generating facility.
 - 5.2.2. Forced Outages shall be reported by Seller to NCPA within twenty (20) minutes of such outages.
 - 5.2.3. Notice by Seller to NCPA of a Forced Outage shall include the reason for the outage (if known), expected duration of the outage, and the capacity reduction.
 - 5.2.4. Within forty-six (46) hours of a Forced Outage, a detailed verbal report shall be provided by Seller to NCPA specifying the reason for the outage, expected duration of such outage, capacity reduction, and actions taken to mitigate such outage.
- 5.3. Commencement of an Outage – Seller shall not begin any planned Outage without prior approval of NCPA and the ISO.
- 5.4. Return to Service – Seller shall notify NCPA immediately whenever a generating unit is returned to service.

6. When NCPA is not the Scheduling Coordinator

- 6.1. Seller shall cause its Scheduling Coordinator to provide all required Outage reporting information directly to the ISO as required by the then existing ISO scheduling protocols.

7. Notices

- 7.1. All Scheduling notices and Schedules are to be submitted to Buyer by phone, fax or email to the following persons:
 - 7.1.1. For Day Ahead Schedule changes, inform the Buyer's Pre-Scheduling Contact listed in Exhibit 13a [Contacts, Buyer].
 - 7.1.2. For Hourly Modifications, inform the Buyer's Schedule Coordinator Contact listed in Exhibit 13a [Contacts, Buyer].
 - 7.1.3. For forced Outages, inform the Buyer's Dispatcher Contact listed in Exhibit 13a

[Contacts, Buyer].

- 7.1.4. For planned Outages, inform the Buyer's Dispatcher and Supervisor of Dispatch Operations Contacts listed in Exhibit 13a [Contacts, Buyer].

8. Example Form Of Day-Ahead Schedule:

June [____], 2007

Hour Ended	Expected Capability
1	2
2	2
3	2
4	2
5	2
6	2
7	1
8	1
9	2
10	2
11	2
12	2
13	0
14	0
15	0
16	1
17	2
18	2
19	2
20	2
21	2
22	2
23	2
24	2

Expected Daily Temperatures (in Fahrenheit):

_____ Low
_____ High

Contact Information:

Scheduling Coordinator:

Facility / City:

Exhibit 11

FORM OF ATTESTATION

Environmental Attribute Attestation and Bill of Sale

[*Name of Seller*] ("Seller") hereby sells, transfers and delivers to **Northern California Power Agency** ("Buyer") the Environmental Attributes and Environmental Attributes Reporting Rights associated with the generation of the indicated energy for delivery to the grid (as such terms are defined in the Long Term Power Purchase Agreement ("Agreement")) dated [*Date*], between Buyer and Seller) arising from the generation for delivery to the grid of the energy by the Generating Facility described below:

Facility name and location: _____ *Project Name* _____ (_____ County, California)
EIA ID #: _____ CEC ID #: _____ ISO Meter ID #: _____
Fuel Type: _____ Capacity (MW): _____ Operational Date: _____

<u>Dates</u>	<u>MWhrs generated</u>	<u>Dates</u>	<u>MWhrs generated</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

in the amount of one Environmental Attribute for each megaWatt hour generated; and Seller further attests, warrants and represents as follows:

- i) to the best of its knowledge, the information provided herein is true and correct;
- ii) this transfer to Buyer is the one and only sale of the Environmental Attributes and associated Environmental Attributes Reporting Rights referenced herein;
- iii) the Facility generated and delivered to the grid the energy in the amount indicated as undifferentiated energy; and

(check one)

- ☐ iv) Seller owns the facility.
- ☐ iv) to the best of Seller's knowledge, each of the Environmental Attributes associated with the generation of the indicated energy for delivery to the grid have been generated and sold by the Facility.

This serves as a bill of sale, transferring from Seller to Buyer all of Seller's right, title and interest in and to the Environmental Attributes associated with the generation of the energy for delivery to the grid.

Contact Person: Name: _____ Phone: _____

WITNESS MY HAND,

Seller: _____

By _____
Title _____
Date: _____

Exhibit 12

PAYMENT / WIRE INSTRUCTIONS

**NORTHERN CALIFORNIA POWER AGENCY (Buyer)
WIRE INSTRUCTIONS**

The following information is to be used when wiring funds for deposit to Buyer:

U.S. Bank
ABA# 121122676
For Deposit to:
Northern California Power Agency
Acct. No. 1-534-0216-2744

For information purposes, please fax a copy of the wire instructions to Buyer at (916) 781-4255, Attention Treasurer-Controller.

_____ [*Seller's Name*] _____ (Seller)
WIRE INSTRUCTIONS

The following information is to be used when wiring funds for deposit to [*Seller's Name*]:

For Deposit to:

For information purposes, please fax a copy of the wire instructions to [*Seller's Name*] at [*Seller's phone number*], Attention [*Seller's relevant contact person*].

Exhibit 13a

NCPA (BUYER) CONTACTS

1. Contract Management

Name	Phone	Email
Dana Griffith	916-781-4219	dana.griffith@ncpa.com

2. Billing/Invoice Issues

Name	Phone	Email
Bob Caracristi	916-781-4224	bob.caracristi@ncpa.com
Mike Daniels	916-781-4205	mike.daniels@ncpa.com

3. NCPA Pre-Scheduling

Monthly, weekly and daily generation schedules are to be provided to NCPA Pre-Scheduling contacts.

Name	Phone	Email
Kevin McMahan	916-786-0123 916-781-4227	kevin.mcmahan@ncpa.com
Norm Worthington	916-786-0124	norm.worthington@ncpa.com
Don Imamura	916-781-4240	don.imamura@ncpa.com
Ken Goeke	916-781-4290	ken.goeke@ncpa.com
Pre-Scheduling (FAX)	916-781-4239	

4. NCPA Schedule Coordination

All Hour Ahead or Real-Time Schedule changes are to be provided to NCPA Scheduling Coordinator Contacts.

Name	Phone	Email
NCPA Scheduling Coordinator	916-781-4237 (FAX) 916-781-4226	SC2@ncpa.com

5. NCPA Dispatch/Outage Coordination

All Planned and/or Forced Outages of Generating Facilities are to be provided to NCPA Dispatch/Outage Coordination.

Name	Phone	Email
Dave Wilke (<i>Supervisor of Dispatch Operations</i>)	916-781-4225	dave.wilke@ncpa.com
NCPA Dispatch	916-786-3518	Dispatch@ncpa.com
NCPA Scheduling Coordinator	916-781-4237	SC2@ncpa.com
NCPA Dispatch	(FAX) 916-781-4226	

Exhibit 13b

[Name of Seller] (SELLER) CONTACTS

1. Contract Management

Name	Phone	Email
_____	_____	_____

2. Billing/Invoice Issues

Name	Phone	Email
_____	_____	_____

3. Pre-Scheduling and Dispatch/Outage Coordination

Annual, Quarterly, Weekly and Daily generation schedules:

Name	Phone	Email
_____	_____	_____
_____	_____	_____

Pre-Scheduling (FAX) _____

4. Operator and Real Time Issues

All Planned and/or Forced Outages of generation facilities are to be provided to NCPA Dispatch/Outage Coordination.

Name	Phone	Email
_____	_____	_____

(FAX) 916-781-4226

Exhibit 14

SELLER'S INSURANCE INFORMATION

[TO BE DETERMINED]

RESOLUTION NO. 2008-04

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING THE CITY MANAGER TO EXECUTE
A NORTHERN CALIFORNIA POWER AGENCY (NCPA)
GREEN POWER PROJECT AMENDED
3RD PHASE AGREEMENT

=====

WHEREAS, the City of Lodi ("City") is a municipal utility and an electrical "Load Serving Entity" within the California electrical transmission grid; and

WHEREAS, the City desires to increase the utilization of renewable energy resources as part of its power mix strategy and has previously adopted a local Renewable Portfolio Standard (RPS); and

WHEREAS, the City is ready, willing, and able to purchase power supplies through NCPA power purchase agreements and physical assets, which generate electricity using renewable resources; and

WHEREAS, the Northern California Power Agency (NCPA) is ready, willing, and able to enter into power purchase agreements and acquire physical assets, which generate electricity using renewable resources on behalf of the City to assist in meeting the goals of its RPS; and

WHEREAS, the City is desirous of joining the NCPA Green Power Pool (NGPP) to assist the City in meeting its RPS and other renewable power goals, reducing reliance on fossil fuels and their associated fuel price volatilities, assisting the State of California in meeting its renewable energy goals, lowering delivery risk by spreading energy deliveries across multiple projects, avoiding duplication of efforts, and achieving economies of scale; and

WHEREAS, changes in the green power market have hindered the acquisition of green power resources; and

WHEREAS, the NCPA Commission on November 29, 2007, approved the Amended NGPP 3rd Phase Agreement, which addresses certain green market issues; and

WHEREAS, the Amended NGPP 3rd Phase Agreement will better enable the City through NCPA to negotiate and enter into power purchase agreements and investigate and pursue the acquisition of physical assets to generate electricity using renewable resources.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize (i) the City Manager to execute a Northern California Power Agency Green Power Project Amended 3rd Phase Agreement and (ii) the Electric Utility Director, or his/her designee, to represent the City in administering the Agreement in accordance with its terms.

Dated: January 16, 2008

=====

I hereby certify that Resolution No. 2008-04 was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 16, 2008, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, Katzakian,
and Mayor Mounce

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



RANDI JOHL
City Clerk